

**PROTECTING WORKERS' RIGHT TO ORGANIZE:  
THE NEED FOR LABOR LAW REFORM**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR,  
AND PENSIONS

COMMITTEE ON EDUCATION  
AND LABOR

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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HEARING HELD IN WASHINGTON, DC, MARCH 26, 2019

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## **PROTECTING WORKERS' RIGHT TO ORGANIZE: THE NEED FOR LABOR LAW REFORM**

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**Tuesday, March 26, 2019  
House of Representatives,  
Subcommittee on Health,  
Employment, Labor, and Pensions,  
Committee on Education and Labor,  
Washington, DC.**

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The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2175, Rayburn House Office Building, Hon. Frederica Wilson [chairwoman of the subcommittee] presiding.

Present: Representatives Wilson, Norcross, Morelle, Wild, McBath, Underwood, Courtney, Fudge, Harder, Shalala, Levin, Scott, Walberg, Roe, Allen, Banks, Taylor, Watkins, Wright, Johnson, and Foxx.

Staff present: Tylease Alli, Chief Clerk; Jordan Barab, Senior Labor Policy Advisor; Nekea Brown, Deputy Clerk; Ilana Brunner, General Counsel—Health and Labor; Kyle deCant, Labor Policy Counsel; Emma Eatman, Press Aide; Mishawn Freeman, Staff Assistant; Sheila Havenner, Director of Information Technology; Eli Hovland, Staff Assistant; Stephanie Lalle, Deputy Communications Director; Bertram Lee, Policy Counsel; Richard Miller, Director of Labor Policy; Max Moore, Office Aide; Veronique Pluviose, Staff Director; Banyon Vassar, Deputy Director of Information Technology; Katelyn Walker, Counsel; Cyrus Artz, Minority Parliamentarian; Marty Boughton, Minority Press Secretary; Courtney Butcher, Minority Coalitions and Members Services Coordinator; Akash Chougule, Minority Professional Staff Member; Rob Green, Minority Director of Workforce Policy; Hannah Matesic, Minority Director of Operations; Kelley McNabb, Minority Communications Director; Brandon Renz, Minority Staff Director; Ben Ridder, Minority Legislative Assistant; Meredith Schellin, Minority Deputy Press Secretary and Digital Advisor; and Heather Wadyka, Minority Staff Assistant.

Chairwoman WILSON. The Subcommittee on Health, Employment, Labor, and Pensions will come to order.

Welcome, everyone. I note that a quorum is present.

The subcommittee is meeting today in a hearing to receive testimony on “Protecting Workers’ Rights to Organize: the Need for Labor Law Reform.”

Pursuant to committee rule 7(c), opening statements are limited to the chair and the ranking member. This allows us to hear from our witnesses sooner and provides all members with adequate time to ask questions.

I recognize myself now for the purpose of making an opening statement.

Today's hearing is an important opportunity to examine the threats to workers' rights and explore proposals that will improve the quality of life for millions of workers and their families.

America's unions are engines of economic mobility. For generations, they have fueled our Nation's prosperity, protected the health and safety of American workers, and supported a strong middle class.

Beyond fighting for better wages and benefits, unions safeguard equal pay for equal work. They advocate well beyond their membership to ensure that all workers can achieve economic mobility. As Congress considers measures to close the wage gap for women and people of color, unions play an essential role in fostering pay equity.

Strong unions played a central role in building a robust middle class in this country, and they are essential to rebuilding it again.

Simply put, if you claim to back the interests of working people, you must also be pro-union.

The right to join a union is an internationally recognized human right. Unfortunately, the combination of weak labor laws, intensification of employer opposition to unions, and relentless political attacks have driven union membership to historic lows.

Roughly a third of American workers were in a union in 1956. Today, just 1 in 10 workers is in a union. This shift has had widespread consequences for working families and the middle class. I call your attention to the charts.

As union membership decreased from 27.1 percent to 11.1 percent between 1973 and 2015, the share of income going to the top 10 percent skyrocketed from 31.9 percent to 47.8 percent. Over the past decades, wages for the typical worker have stagnated. The link between rising productivity and higher pay has been broken.

When union membership hovered around 30 percent between the end of World War II and 1973, wage growth was in lockstep with increased productivity by over 90 percent. However, between 1973 and 2017, productivity increased by 73 percent, but wages have only grown by 12.3 percent, adjusting for inflation.

Let me underscore this important point: The decline in union membership has eroded the link between growing productivity and rising pay. It has stagnated wages for American workers.

Inequality and wage stagnation are not natural products of a functioning economy. They are the result of policy choices that have stripped workers of the power to stand together and bargain for fairer wages, benefits, and working conditions.

We have seen this consistently in the Trump administration's policy decisions as President Trump has sided with big corporations at the expense of workers and unions.

Under this administration, the National Labor Relations Board has empowered employers to gerrymander and interfere in union representation elections, misclassify employees as contractors to

deny them their rights, and retaliate against workers who exercise their First Amendment rights. This is simply unacceptable.

That is why during the last Congress, committee Democrats introduced legislation to ensure that workers have strong bargaining rights and protections from unscrupulous employers. This Congress, the committee will continue the effort to strengthen labor laws so that workers can stand together and negotiate for a fair return on their work.

Today, we will explore the strengths and weaknesses in the current State of labor law and identify proposals that hold employers that violate the law accountable, protect collective action, and modernize labor laws for a changing economy.

If Congress is truly on the side of American workers, then we must protect their right to bargain for better wages and better working conditions. This hearing is an important step toward that goal.

I want to thank all of our witnesses for being with us today, and I look forward to your testimony to enlighten us.

I will now recognize the distinguished ranking member for the purpose of making an opening statement.

Ranking Member Walberg.

[The statement of Chairwoman Wilson follows:]

**Prepared Statement of Hon. Frederica S. Wilson, Chairwoman,  
Subcommittee on Health, Employment, Labor, and Pensions**

Today's hearing is an important opportunity to examine the threats to workers' rights and explore proposals that will improve the quality of life for millions of workers and their families.

America's unions are engines of economic mobility. For generations, they have fueled our Nation's prosperity, protected the health and safety of American workers, and supported a strong middle class.

Beyond fighting for better wages and benefits, unions safeguard equal pay for equal work. They advocate well beyond their membership to ensure that all workers can achieve economic mobility. As Congress considers measures to close the wage gaps for women and people of color, unions play an essential role in fostering pay equity.

Strong unions played a central role in building a robust middle class in this country, and they are essential to rebuilding it again.

Simply put, if you claim to back the interests of working people, you must also be pro-union.

The right to join a union is an internationally recognized human right. Unfortunately, the combination of weak labor laws, intensification of employer opposition to unions, and relentless political attacks have driven union membership to historic lows.

Roughly a third of American workers were in a union in 1956. Today, just one in 10 workers is in a union. This shift has had widespread consequences for working families and the middle class. As union membership decreased from 27.1 percent to 11.1 percent between 1973 and 2015, the share of income going to the top 10 percent skyrocketed from 31.9 percent to 47.8 percent.

Over the past 4 decades, wages for the typical worker have stagnated. The link between rising productivity and higher pay has been broken. When union membership hovered around 30 percent between the end of World War II and 1973, wage growth was in lockstep with increased productivity by over 90 percent.

However, between 1973 and 2017, productivity increased by 73 percent, but wages have only grown by 12.3 percent, adjusting for inflation. Let me underscore this important point: the decline in union membership has eroded the link between growing productivity and rising pay. It has stagnated wages for American workers. Inequality and wage stagnation are not natural products of a functioning economy. They are the result of policy choices that have stripped workers of the power to stand together and bargain for fairer wages, benefits and working conditions.

We have seen this consistently in the Trump administration's policy decisions as President Trump has sided with big corporations at the expense of workers and

unions. Under this administration, the National Labor Relations Board has empowered employers to:

- \* Gerrymander and interfere in union representation elections,
- \* Misclassify employees as contractors to deny them their rights, and
- \* Retaliate against workers who exercise their First Amendment rights.

This is simply unacceptable.

That is why, during the last Congress, Committee Democrats introduced legislation to ensure that workers have strong bargaining rights and protections from unscrupulous employers.

This Congress, the Committee will continue the effort to strengthen labor laws so that workers can stand together and negotiate for a fair return on their work.

Today we will explore the strengths and weaknesses in the current State of labor law, and identify proposals that:

- \* Hold employers that violate the law accountable,
- \* Protect collective action, and
- \* Modernize labor laws for a changing economy.

If Congress is truly on the side of American workers, then we must protect their right to bargain for better wages and better working conditions.

This hearing is an important step toward that goal.

I want to thank all of our witnesses for being with us today and I look forward to your testimony.

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Mr. WALBERG. I thank the Chairwoman and appreciate the opportunity to make the statement and be part of this hearing today.

While we agree that Federal labor law is in need of reform, the title of today's hearing, with all due respect, is premised on a fallacy: that workers' right to organize and join a union is in some way in jeopardy.

Federal law protects workers' rights to unionize, point blank. Becoming a union member is an important and personal decision, and Republicans and Democrats alike respect the right of employees to decide for themselves—to decide for themselves—whether union membership is right for them.

It is personal for me, too. I grew up in a union household. My father was a machinist and tool and die maker who spent part of his working career as a union organizer. When I graduated from high school, I went to work at the same steel mill on the south side of Chicago.

It is important that we have a level playing field and workers receive good pay for a good day's work. But times have changed since my father was organizing in the workplace.

Since 1983, union membership has steadily fallen from over 20 percent to just 10.5 percent in 2018, and less than 7 percent in the private sector.

Of the workers that are still represented by unions today, almost none, like me when I was a member of the union, ever actually voted for the union that represents them. This is America.

It seems straightforward that the best way to reverse the downward trend would be through increased transparency and working to better serve their members. Instead, we have seen calls for labor laws that would empower union interests and allow those at the top—at the top—to further consolidate power.

There is no question that the National Labor Relations Act, NLRA, and Labor Management Reporting and Disclosure Act, LMRDA, are in need of targeted reform. However, the answer should not be to alter these laws in a way that tilts the balance of power toward special interests at the expense of the hard-working men and women who drive our economy.



Let's not forget, the last time Democrats held a majority in the House, they voted to deny workers the right to a secret ballot in union elections. In 2015, the Obama NLRB implemented a rule that gives workers as few as 11 days to decide whether or not to join a union and do the research necessary, for their best interest.

The Obama board also ruled that employers must hand over employees'—and get this, none of us like this—hand over employees' private information, like home addresses, phone numbers, and work schedules, aiding well-documented efforts to harass, intimidate, and pressure workers into supporting the union. Private information.

Workers deserve the right to make free and informed decisions about joining a union. And reforms to the NLRA and LMRDA should put workers, not union leaders, first.

That is why Republicans have introduced numerous pieces of legislation in recent years that would protect and expand workers' rights within their union, and increase financial transparency, so workers can see with greater detail how unions are spending the dues taken from the workers' hard-earned paychecks.

American workers have greater opportunities today than they have in decades. Wages are rising. That is a fact. Unemployment is at near record lows, back to the days that I worked at U.S. Steel. Millions of jobs have been created since President Trump took office. There are "help wanted" signs everywhere I go across Michigan.

With so many good-paying jobs waiting to be filled, we need to develop a skilled work force and equip our people with on-the-job experience.

As this economy continues to thrive, our focus should be on expanding pro-growth economic policies that create the best path forward for union and nonunion workers alike.

And I yield back.

[The statement of Mr. Walberg follows:]

**Prepared Statement of Hon. Tim Walberg, Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions**

Thank you for yielding.

While we agree that Federal labor law is in need of reform, the title of today's hearing is premised on a fallacy: that workers' right to organize and join a union is, in some way, in jeopardy. Federal law protects workers' right to unionize, point blank. Becoming a union member is an important personal decision and Republicans and Democrats alike respect the right of employees to decide for themselves whether union membership is right for them.

It's personal for me, too. I grew up in a union household. My father was a machinist and tool and die maker who spent part of his working career as a union organizer. When I graduated from high school, I went to work at a steel mill on the south side of Chicago. It's important that we have a level playing field and workers receive good pay for a good day's work.

But times have changed since my father was organizing his workplace. Since 1983, union membership has steadily fallen from over 20 percent to just 110.5 percent in 2018, and less than 7 percent in the private sector. Of the workers that are still represented by unions today, almost none have ever actually voted for the union that represents them.

It seems straightforward that the best way to reverse the downward trend would be through increased transparency and working to better serve their members. Instead, we've seen calls for labor laws that would empower union interests and allow those at the top to further consolidate power.

There's no question that the National Labor Relations Act (NLRA) and Labor-Management Reporting and Disclosure Act (LMRDA) are in need of targeted re-

forms. However, the answer should not be to alter these laws in a way that tilts the balance of power toward special interests at the expense of the hardworking men and women who drive our economy.

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Workers deserve the right to make free and informed decisions about joining a union, and reforms to the NLRA and LMRDA should put workers, not union leaders, first. That is why Republicans have introduced numerous pieces of legislation in recent years that would protect and expand workers' rights within their union and increase financial transparency, so workers can see with greater detail how unions are spending the dues taken from workers' hard-earned paychecks.

American workers have greater opportunities today than they have in decades. Wages are rising, unemployment is at near-record lows, and millions of jobs have been created since President Trump took office. There are "Help Wanted" signs everywhere I go across Michigan. With so many good-paying jobs waiting to be filled, we need to develop a skilled work force and equip our people with on-the-job experience.

As this economy continues to thrive, our focus should be on expanding pro-growth economic policies that create the best path forward for union and non-union workers alike.

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Chairwoman WILSON. Without objection, all other members who wish to insert written statements into the record may do so by submitting them to the committee clerk electronically in Microsoft Word format by 5 p.m. on April 9, 2019.

I will now introduce our witnesses.

Dr. Jake Rosenfeld is an assistant professor at Washington University in St. Louis, Missouri.

Welcome.

Ms. Cynthia Harper is a lamination specialist, formerly employed in an automotive glass plant, and she is from Englewood, Ohio.

Welcome.

Mr. Glenn Taubman is a staff attorney at the National Right to Work Legal Defense Foundation.

Welcome.

Ms. Devki Virk is a member of the law firm Bredhoff & Kaiser.

Welcome.

We appreciate all of the witnesses for being here today, and we look forward to your testimony. Let me remind the witnesses that we have read your written statements. They will appear in full in the hearing record. Pursuant to committee rule 7(d) and committee practice, each of you is asked to limit your oral presentation to a 5-minute summary of your written statement.

Let me also remind the witnesses that pursuant to Title 18 of the U.S. Code, Section 1001, it is illegal to knowingly and willfully falsify any statement, representation, writing, document, or material fact presented to Congress, or otherwise conceal or cover up material fact.

Before you begin your testimony, please remember to press the button on the microphone in front of you so that it will turn on and the members can hear you. As you begin to speak, the light in front of you will turn green. After 4 minutes, the light will turn yellow to signal that you have 1 minute remaining. With that, when the

light turns red, your 5 minutes have expired and we ask that you please wrap up.

We will let the entire panel make their presentations before we move to member questions. When answering a question, please remember to once again turn your microphone on.

I will first recognize Dr. Rosenfeld.

**STATEMENT OF MR. JAKE ROSENFELD, PH.D., ASSOCIATE  
PROFESSOR OF SOCIOLOGY, WASHINGTON UNIVERSITY IN  
ST. LOUIS, ST. LOUIS, MO**

Dr. ROSENFELD. Madam Chair Wilson, Ranking Member Walberg, and all members of the subcommittee, thank you for the opportunity to testify today about the benefits collective bargaining has on our work force.

My name is Jake Rosenfeld. I am an associate professor of sociology at Washington University in St. Louis, and for the past 15 years I have conducted quantitative research on the linkages between strong unions and economic equality in the U.S. and how union decline has contributed to widening income disparities in our economy today.

The unionization rate today is at its lowest point in over a century. It is as low as it was prior to passage of the National Labor Relations Act, a law intended to guarantee workers the right to bargain collectively with their employers.

This dramatic decline has far-reaching implications for our work force. From my own and related research, I wanted to share four key findings with you today.

First, there is an accumulating body of research from across the social sciences that finds that strong unions were a key factor in delivering widespread gains to millions of working and middle class Americans during the post-World War II decades. Their decline explains much of the subsequent rise in income inequality.

One influential study I co-authored with Bruce Western finds that the fall in union membership explains about a third of the rise of income inequality among men and about a fifth of the rise among women.

A recent study by economists at the International Monetary Fund links diminished union power to rising incomes at the very top of the distribution. The implication from the IMF report is that union decline has allowed the rich to get richer and contributed to stagnant and falling incomes for nearly everyone else.

And this includes nonunion workers. The second finding I want to share with you today stems from new studies that reveal just how important unions were to the economic standing of nonunion workers.

In a 2016 study with Patrick Denice and Jennifer Laird, we examined over three decades of data on millions of American workers who do not belong to a union and found that weekly wages for non-union men would be about \$50 higher if unions today remained as strong as they were in the late 1970's. For a year-round worker, this translates to an annual wage loss of about \$2,700.

In a followup study, we found that the effects of union decline on nonunion pay remained after adjusting statistically for other

key determinates of wages in the modern economy, including rising skill demands, demanufacturing, and automation.

Third, when and where they were strong, unions were especially important for the economic standing of racial and ethnic minorities and women workers. Nationally, union representation rates for African American men in the private sector rose to nearly 40 percent by the early 1970's. And by the end of the 1970's, nearly one out of every four African American women in the private sector belonged to a union.

In this country, we had nearly closed the racial wage gap among women by 1980. The destruction of private sector unions from the 1980's onward widened it once again. My research indicates that had union membership rates for women remained at late 1970's levels, racial wage inequality among women in private sector jobs today would be lowered by as much as a third. Other research has established that gender pay gaps are much smaller in the unionized sector.

The labor movement's upsurge between the Great Depression and World War II relied heavily on immigrants and their children. Echoing this historical pattern, my research reveals that more recent arrivals are joining unions at high rates in those sectors where organized labor remains powerful.

But those sectors are obviously shrinking. Unlike past generations of immigrants who once swelled the ranks of the organized work force, recent immigrants face an economic and political context that is now largely hostile to unions. As a result, contemporary immigrants and their children enter labor markets largely lacking a proven pathway to the middle class that unions had established.

Fourth and finally, it is time to dispel the myth that U.S. workers have turned away from unions. In 2017, researchers at MIT surveyed nearly 4,000 U.S. workers. They asked the nonunion workers whether they would vote for a union if given the opportunity, and nearly half replied yes.

If the private sector unionization rate were simply a function of workers' desire, it would be much closer to 50 percent than its current rate of just above 5 percent. And a recent Gallup poll found that support for labor unions is at a 15-year high with nearly two-thirds of Americans expressing approval.

This is what makes strengthening the National Labor Relations Act so important. Today workers are often blocked from exercising their legally guaranteed freedom to negotiate. Inequality has reached heights unscaled since the first Gilded Age. These two trends are intimately tied, and if we are serious about combating the latter, it is past time to do something about the former.

Thank you.

[The statement of Dr. Rosenfeld follows:]

**Testimony before the Subcommittee on Health, Education, Labor, and Pensions**

**Date: Tuesday, March 26, 2019**

**Jake Rosenfeld**

**March 26, 2019**

Madame Chair Wilson, Ranking Member Walberg, and all members of the subcommittee, thank you for the opportunity to testify today about the benefits collective bargaining has on our workforce.

My name is Jake Rosenfeld and I am an Associate Professor of Sociology at Washington University-St. Louis. For the past 15 years, I have conducted quantitative research on the linkages between strong unions and income equality in the U.S., and on how union decline has contributed to widening income disparities in our economy today.

During the labor movement's heyday in the mid-1950s, one out of every three private sector workers belonged to a union. Today about one in twenty do. The unionization rate today is at its lowest point in over a century. It is as low as it was prior to passage of the National Labor Relations Act, a law intended to guarantee workers the right to bargain collectively with their employers.

This dramatic decline has far-reaching implications for our workforce. From my own and related research, I have four key findings to share with you today.

First, an accumulating body of research from across the social sciences finds that strong unions were a key factor in delivering widespread gains to millions of working- and middle-class Americans during the post-World War II decades. Their decline explains much of the rise of income inequality. One influential study I co-authored with Bruce Western of Columbia University finds that the fall in union membership explains a third of the rise in wage inequality among men, and about a fifth among women. A recent study by economists at the International Monetary Fund links diminished union power to rising incomes at the very top. The implications from the IMF reports is that union decline has allowed the rich to get richer and contributed to stagnant or falling incomes for nearly everyone else.

This includes non-union workers. The second finding I want to share with you stems from new studies that reveal just how important unions were to non-union workers. In a 2016 study with Patrick Denice and Jennifer Laird, we examine over three decades of data on millions of non-union workers and find that weekly wages for non-union men would be over \$50 higher if unions today remained as strong as they were in the late 1970s. For a year-round worker, this translates to an annual wage loss of \$2,700. In a follow-up study we find that the effects of union decline on non-union pay remain even after adjusting statistically for manufacturing decline, automation, rising skill demands, and other prominent explanations for wage trends in our economy.

Third, when and where they were strong, unions were especially important for supporting the economic standing of racial and ethnic minorities and women workers. Nationally, union membership rates for African-American men in the private sector rose to nearly 40% by the early 1970s. And by the end of the 1970s, nearly 1 in 4 African-American women in the private sector belonged to a union. We had nearly closed the racial wage gap among women by 1980. The destruction of private sector unions from the 1980s onward opened it once again. My research with Meredith Kleykamp indicates that had union membership rates for women remained at late-1970s levels, racial wage inequality among women in private sector jobs today would be reduced by as much as 30%. Other research has established that gender pay gaps are smaller in the unionized sector.

The labor movement's upsurge between the Great Depression and World War II relied heavily on immigrants and their children. Echoing this historical pattern, my research reveals that more recent arrivals are joining unions at high rates in those sectors where organized labor remains powerful. But those sectors are shrinking. Unlike past generations of immigrants who once swelled the ranks of the organized workforce, recent immigrants face an economic and political context largely hostile to unions. As a result, contemporary immigrants and their children enter labor markets largely lacking a proven pathway to the middle-class that strong unions had once established.

Fourth, and finally, it is time to dispel the myth that U.S. workers have turned away from unions. In 2017 researchers at MIT surveyed nearly 4,000 U.S. workers. They asked non-union workers whether they would vote for a union if given the opportunity. Nearly half replied yes. If the private sector unionization rate were simply a function of worker's desire, it would much closer to 50% than its current rate of 5%. A recent Gallup poll found that support for labor unions is at a 15-year high, with nearly 2/3 of Americans expressing approval.

This is what makes strengthening the National Labor Relations Act so important. Today workers are often blocked from exercising their legally-guaranteed freedom to negotiate. Inequality has reached heights unscaled since the first Gilded Age. These two trends are intimately tied, and if we are serious about combating the latter, it is past time to do something about the former.

Thank you for your time.

Chairwoman WILSON. Thank you, Dr. Rosenfeld.  
We will now recognize Ms. Harper.

**STATEMENT OF MS. CYNTHIA HARPER, ENGLEWOOD, OH**

Ms. HARPER. Thank you, Madam Chair Wilson, Ranking Member Walberg, and members of the committee, for the opportunity to testify today. My name is Cynthia Harper. I live in Englewood, Ohio.

I worked as a lamination specialist at Fuyao Glass of America in Moraine, Ohio, from May 2015, to October 2017, where we made automotive glass. I also worked at that same plant for General Motors Truck and Bus for 14 years.

My job was strenuous and dangerous. I worked in the stretch room, loading polyvinyl butryal lamination into a machine and then putting measurements in the computer. There was no lockout, tagout policy in place, which is a step that shuts down the computer when maintenance needs to be done. Not only is this dangerous for workers, not having this policy, it is illegal.

There were no overhead mirrors in the aisles or pedestrian lanes. Forklifts, golf carts, and people were also using the same lanes, causing mass confusion and fear that someone would be killed accidentally. Numerous of occasions I have witnessed people almost getting hit by forklifts because they were not properly designated.

Workers were also handling hazardous material with no safety equipment. When I cut PVB, I worked with a homemade knife that consists of a blade and some leftover PVB. We were not allowed to wear gloves and someone was cut almost every day. Management said they didn't use gloves and we needed no gloves because our hands could properly line the glass.

There was no emergency exit in the room, and if there was a fire, we would have no way to get out.

Our safety concerns were not being addressed. I believe if we had a union, the plant would be safer and more fair across the board.

At the end of the day, we all wanted Fuyao to be a better and safer workplace for everyone. A union would have given us a voice on the job, and also a say in our safety and health improvements.

When the company found out we were trying to organize a union, some workers were fired. Workers on the VOC committee were prime targets of the company and were fired. In meetings, management would threaten that if we had a union, they would move their business elsewhere.

Fuyao also paid an outside company to come in and hold small mandatory group meetings. They told us in these meetings negative things about the UAW. They told us if we signed a UAW union card we would be signing our life away. I found out later that Fuyao hired LRI, an outside company, and paid them almost \$800,000. But our starting pay was only \$12 an hour.

I was a strong supporter of the union and management knew it. They saw me handing out handbills at the front door, inviting people to come to our meetings. I wore my pro-union shirt. I was in the media. And this is all within my right, according to the NLRB.

I also was identified as one of the people that filed the complaint against Fuyao with OSHA. OSHA cited them on numerous of those violations and they were fined on the violations.

The company retaliated against me. In April of 2017, they demoted me to a lower-paying job that was more physically demanding, and they told me that I had to do the job by myself when it was previously a two-man job or either get fired.

My new job was a bubble repair job where I had to check for buttons. I had to lift glass that weighed almost up to a hundred pounds and the glass was taller and bigger than I was. It was physically tough.

In June of 2017, I hurt my back on the job. I was fired after going out on medical leave because they allegedly said that I used my available time. I was fired days before the UAW filed a petition to unionize.

Unfortunately, the anti-union campaign worked. The people feared losing their jobs, and at the end of the day we did not get a union.

My story and experience is not isolated or unique. The system is unfairly stacked against workers like myself trying to organize a union. I just wanted a fair shake and a voice on the job. I feared that I would die or not see my family because of the major health and safety issues that were not being addressed by the company.

I believe that workers should have the freedom to form a union and not fear losing their jobs for support of a union. More enforcement needs to be done. The current law is not working. Workers need more protection.

I look forward to responding to your questions. Thank you.

[The statement of Ms. Harper follows:]



March 26, 2019

**Testimony of Cynthia Harper, Former Fuyao Glass America Inc. Employee  
House Education and Labor, Health, Employment, Labor and Pensions Subcommittee  
“Protecting Workers’ Right to Organize: The Need for Labor Law Reform”**

Thank you Madam Chair Wilson, Ranking Member Walberg, and members of the Committee for the opportunity to testify today. My name is Cynthia Harper and I live in Englewood, Ohio.

I worked as a Lamination Specialist for Fuyao Glass America Inc. at the Moraine plant in Ohio from May 2015-October 2017. The plant employs roughly 2,100 workers and occupies nearly two million square feet of space. Located at the General Motor’s formerly assembly plant, it is the largest fabrication plant in the world with the capacity to produce four million automotive car sets and four million replacement glass windshields each year.

When I first joined Fuyao Glass, I was excited to work in manufacturing again since I was employed at the GM truck facility for 14 years. During my first day of orientation, I remember feeling hopeful because the job provided decent wages and the opportunity for growth. But sadly, that is not how my experience panned out.

My job was strenuous and dangerous. I worked in the stretch room where I loaded the polyvinyl butyral (PVB) laminated glass in a machine, input the measurements and then cut the PVB with a blade. There was no lock out, tag out policy which are the steps taken to shut down equipment before maintenance occurs. Not only is dangerous for workers not to have this policy, it is illegal. There were no overhead mirrors in the aisles and no marked pedestrian lanes. Forklifts, golf carts, and people were all using the same lanes, causing mass confusion and fear that someone would be killed accidentally. On numerous occasions, I witnessed people almost getting hit by forklifts because lanes were not properly designated for pedestrians and vehicles.

Workers were also handling hazardous materials with no safety equipment on. When I cut the PVB, I worked with a homemade knife that consisted of a blade and some of the leftover PVB. We were not allowed to wear gloves so someone got cut every day. Management told us they didn’t use gloves and bare hands were needed to properly line up the glass. I worked in an area that had no emergency exit, so if there was a fire there would be no way to get out.

Our safety concerns were not being addressed. I believed that if we had a union, the plant would be safer and more fair across the board. At the end of the day, we all wanted to make Fuyao a better and safer workplace for everyone. A union would give workers a voice in the job and we would have a say in health and safety improvements.

When the company found out we were trying to organize a union, everything changed. Some of the workers were fired and faced retribution. Several workers who served on the Volunteer Organizing Committee (VOC) were prime targets of the company and were fired. Management

saw that we had majority union support and they came up with a plan to break us up. They got rid of 3<sup>rd</sup> shift and split us up by moving workers around to other departments. At meetings, management threatened that if we had a union they would pack up and move their business elsewhere. Fuyao also paid an outside company to come in and hold small group mandatory meetings. They told us negative things about the United Auto Workers Union. I recall a presenter held up a booklet, allegedly from the National Labor relations Board (NLRB) about our rights. But it didn't have NLRB seal on it. He said that everyone had the right to join a union but focused on how bad the union was for workers. We were told that all the union wants to do is take our money and that the union didn't respect us, it just respected the money. They told us if we signed the UAW union card, we would be signing our life away. I found out later that Fuyao paid an outside firm, Labor Relations Institute Inc./LRI Consulting Services Inc. close to \$800,000 to fight against the workers who wanted to form a union.

I was a strong supporter of the union and management knew it. Management saw me handing out handbills at the front entrance of plant which were flyers inviting workers to union meetings. I wore pro-UAW t-shirts. I was featured in the media. All of these actions were perfectly within my right to do under the NLRB. I was also publicly identified as the employee who filed a complaint with the Occupational Safety and Health Administration (OSHA) against Fuyao. OSHA cited Fuyao for numerous OSHA violations and they were fined. The company retaliated and took steps to push me out. In April 2017, I was demoted into a lower paying and more physically demanding job after refusing to sign a paper attesting that I had been trained on the job. They moved me to the bubble repair job, which was previously a two-man job but I was forced to do it alone or risk losing my job altogether. I questioned HR about their decision to reassign me. Their rationale was that there were too many workers in the lamination department and I wasn't getting along with my co-workers. I knew this wasn't true, especially since the interpreter was doing my lamination when I was moved. This was my first time hearing these new claims as they had previously stated it was because I refused to sign the bogus training paperwork.

My new job was to inspect glass for bubbles. I had to pick up glass that weighed up to 100 lbs. Often, the glass was taller and wider than me. It was physically tough. In June 2017, I was injured on the job and went out on leave. I popped my back while lifting the glass. I was fired while on medical leave for allegedly exceeding available leave time. I was fired just days after the UAW filed a petition to represent a unit of Fuyao employees. It didn't seem fair since I had a good record with the company. My performance and attendance was good. I organized department bowling parties. It didn't seem right.

Unfortunately, the anti-union campaign worked. Workers feared losing their job for supporting the union, and we ended up not getting enough support to form a union. These problems persist at Fuyao. In March 2018, a co-worker of mine was crushed to death between a forklift and nearly a ton of glass. Employees still contact me from the plant saying that they wish they had a union. We need labor reforms that put workers before profits. Senseless deaths can be prevented.

My story and experience are not isolated or unique. The system is unfairly stacked against workers like myself who try to organize a union. I just wanted a fair shake and a voice on the job. I feared that I would die and not see my family again because of the major health and safety issues that were not being addressed at the plant. I believe that workers should have the freedom to form a union and not fear losing their job for supporting the union. Workers should be able to exercise their rights in the workplace without fear of being demoted. Our current laws are not working. More enforcement is needed and workers need more protections.

I look forward to responding to your questions. Thank you.

Chairwoman WILSON. Thank you, Ms. Harper.  
We will now recognize Mr. Taubman.

**STATEMENT OF MR. GLENN M. TAUBMAN, STAFF ATTORNEY,  
NATIONAL RIGHT TO WORK DEFENSE FOUNDATION,  
SPRINGFIELD, VA**

Mr. TAUBMAN. Chairwoman Wilson, Ranking Member Walberg, and distinguished Committee members, thank you for the opportunity to appear before you today.

I have been practicing labor and constitutional law for over 35 years for individual employees only at the National Right to Work Legal Defense Foundation. I believe I have a unique perspective that comes from over three decades of representing thousands of private sector employees covered by the National Labor Relations Act.

The announced topic of this hearing is the need for labor law reform, and I agree that Federal labor law should be reformed to better protect individual liberty and safeguard individual workers' free choice concerning unionization.

No worker in America should be threatened with discharge from his or her workplace for refusing to pay dues and fees to a private organization he or she may despise.

No worker should be forced to be represented by a private organization and its officials who perform poorly in the workplace, who place their own interests above those they purport to represent, or who act corruptly to steal from the very employees they claim to represent.

No worker should be forced to subsidize, as a condition of employment, the political schemes and candidates of a private organization of which they disapprove. Yet this is the reality for millions of private sector workers today under the compulsory dues and monopoly bargaining regimes of the National Labor Relations Act.

Because labor unions under the NLRA do not have to stand for periodic recertification, authoritative estimates show that 94 percent of workers unionized under the NLRA have never voted for the union representing their workplace. Perpetually encrusting a labor union onto a workplace with no showing of current employee support does not lead to workplace stability and does not protect individual employees' freedoms of speech and association.

There are several other current problems with the State of American labor law.

First, current law makes it far easier for employees to form and join a union than it is for those same employees to choose to decertify the union. For example, the National Labor Relations Board maintains a startling array of nonstatutory election blocks and bars that prevent employees from obtaining a decertification election. The Board's current blocking charge rules effectively halt decertifications in at least one third of the cases.

Although all of these bars apply to prevent employees from decertifying the union, none of them apply to prevent employees from certifying the union under the 2014 Obama NLRB's ambush election rules.

No. 2, another major problem with the labor law is that of forced dues and forced exclusive representation. It is neither fair nor constitutional to force employees into paying dues to a private organization upon pain of discharge, as the Supreme Court held just last term in *Janus v. AFSCME*. Similarly, forcing an individual to be represented by a private organization is antithetical to American values of free speech and association.

Just as few on this committee would approve of being forced to be represented against their will by a lawyer or accountant purporting to serve as their exclusive representative for purposes of dealing with the government, few employees want to be forced into an exclusive agency relationship with a labor union for purposes of negotiating their wages and working conditions.

Three, even in right-to-work States where employees have free choice to refrain from union membership or dues, it is usually very difficult for employees to stop paying dues. Union officials write dues checkoff cards in microscopic fonts and in language designed to be as confusing as possible. They make it difficult for employees to exercise their free choice.

Four, 30 years after the Beck decision, union officials continue to thumb their nose at that decision and continue to force employees to pay for political advocacy and candidates over the objections of nonmembers. This leaves nonmembers, like registered nurse Jeanette Geary, little choice but to fight decade-long legal battles to protect their legal rights.

In closing, I wish to reiterate that the NLRA needs serious and prompt reform to protect employee free choice and increase union transparency. For too long, union officials have been empowered by Federal law to gain representational rights without a secret ballot election and force employees to accept union representation and pay unwanted dues or be discharged from their jobs.

Thank you for your attention. I look forward to answering your questions.

[The statement of Mr. Taubman follows:]

STATEMENT OF GLENN M. TAUBMAN  
TO THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON EDUCATION AND LABOR  
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND  
PENSIONS  
HEARING: March 26, 2019

Chairwoman Wilson, Ranking Member Walberg and Distinguished Committee Members:

Thank you for the opportunity to appear before you today. I have been practicing labor and constitutional law for over 35 years, for individual employees only, at the National Right to Work Legal Defense Foundation. (My vitae is attached). I believe I have a unique perspective that comes from over three decades of representing thousands of private sector employees covered by the National Labor Relations Act (NLRA) and the Railway Labor Act.

The announced topic of this hearing is the need for labor law reform. I agree that federal labor law should be reformed to better protect individual liberty and safeguard individual workers' free choice concerning unionization.

No worker in America should be threatened with discharge from his or her workplace for refusing to pay dues and fees to a private organization he or she may despise. No worker should be forced to be represented by a private organization and its officials who perform poorly in the workplace, or place their own interests above those they purport to represent, or act corruptly to steal from the very employees they claim to represent. No worker should be forced to subsidize, as a condition of employment, the political schemes and candidates of a private organization of which they disapprove.

Yet this is the reality for millions of private sector workers today under the compulsory dues and monopoly bargaining regimes of the NLRA.

Because labor unions under the NLRA do not have to stand for periodic recertification, authoritative estimates show that 94% of workers unionized under the NLRA have never voted for the union representing their workplace. James Sherk, Union Members Never Voted for a Union, Heritage Foundation, August 30, 2016, available at <https://www.heritage.org/jobs-and-labor/report/unelected-representatives-94-percent-union-members-never-voted-union>. Perpetually encrusting a labor union onto a workplace, with no showing of current employee

support, does not lead to workplace stability and does not protect individual employees' rights of free speech and association.

Several other problems with the current state of American labor law need to be fixed.

1) Current law makes it far easier for employees to form and join a union than it is for those same employees to decertify the union. For example, the National Labor Relations Board maintains a startling array of non-statutory election "blocks" and "bars" that prevent employees from obtaining a decertification election. The NLRB's current "blocking charge" rules effectively halt decertification elections in their tracks, contrary to the Act's fundamental purpose of employee free choice. NLRB statistics show that approximately 1/3 of decertification elections are blocked or delayed by union foot dragging. See NLRB, Annual Review of Revised R Case Rules, <https://www.nlr.gov/sites/default/files/attachments/news-story/node-4680/RCase%20Annual%20Review.pdf>.

Other election bars the NLRB concocted over the years include the "successor" bar, the "settlement" bar and the "voluntary recognition" bar. Although all of these bars apply to prevent employees from decertifying a union, none of them apply to prevent employees from certifying a union.

In 2014 the Obama NLRB adopted what has become known as the "Ambush" Election Rules, which force union certification elections to be held in as little as 11 days and allow for no blocks or bars, no matter how threatening or egregious a union's unfair labor practice violations may be. See Representation-Case Procedures, 79 Fed. Reg. 74308, 74430–74460 (Dec. 15, 2014). In contrast, the NLRB's "bars" and "blocking charge" policies deny employees their fundamental NLRA rights, allowing union officials to "game the system" and strategically delay or prevent entirely decertification elections.

In 2013, I testified before this Committee with my client Marlene Felter, who was a victim of an abusive "card check" scheme and a denial of the right to a secret ballot election. I highlighted the NLRB's "bars" and "blocking charge" rules. Sadly, six years have passed and this unequal treatment remains, making it much easier for employees to get into a union than it is for them to get out – even though the NLRA's text guarantees employees the equal right to join or refrain.

Some recent NLRB Members have argued for a revision of the "blocking charge" rules, so far to no avail. E.g., *Cablevision Systems Corp.*, Case 29-RD-138839, \*1 n.1 (June 30, 2016) (Order Denying Review); *Valley Hosp. Med.*

Ctr., Inc. & SEIU Local 1107, 28-RD-192131, 2017 WL 2963204 (Order Denying Review, July 6, 2017); Pinnacle Foods Group, 14-RD-226626 (Order of Feb. 4, 2019). Moreover, the Board's continued practice of delaying and denying decertification elections based upon blocking charges has faced severe judicial criticism for close to 60 years. In *NLRB v. Minute Maid Corp.*, the U.S. Court of Appeals for the Fifth Circuit stated:

[T]he Board is [not] relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.

283 F.2d 705, 710 (5th Cir. 1960); see *T-Mobile USA Inc. v. NLRB*, 717 F. App'x 1, 4 (D.C. Cir. 2018) (Sentelle, J., dissenting) (noting the Board's blocking charge policy causes "unfair prejudice"); *Surratt v. NLRB*, 463 F.2d 378 (5th Cir. 1972) (rejecting application of the blocking charge policy); *Templeton v. Dixie Printing Co.*, 444 F.2d 1064 (5th Cir. 1971) (same); *NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71, 75 (7th Cir. 1968) (quoting *Minute Maid Corp.*, 283 F.2d at 710).

In short, it is way past time for Congress and the NLRB to ensure that any election rules apply equally to certification and decertification elections.

2) Another major problem is that of forced union dues and forced exclusive representation. It is neither fair nor constitutional to force employees into paying dues to a private organization upon pain of discharge, as the Supreme Court held just last term in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018). Similarly, forcing an individual to be represented by a private organization is antithetical to American values of free speech and free association. Just as few on this Committee would approve of being forced to be represented against their will by a lawyer or accountant purporting to serve as their exclusive representative for purposes of dealing with the government, few employees want to be forced into an exclusive agency relationship with a labor union for purposes of negotiating their wages and working conditions. Indeed, over 90% of the American private sector workforce has chosen to not be represented by a labor organization.

Union officials fought tooth and nail for the abusive power to force their so-called "representation" on all workers. By exercising this monopoly power, they



forbid individual workers from representing themselves. Then, rubbing salt in the wound, these same union officials turn around and falsely complain that since they've forced those workers to accept their representation, they should also be able to force those workers to pay for it. This is like being kidnapped by a cab driver, driven all over town against your will, and then being forced to pay the driver an exorbitant fare for the "services" he allegedly rendered.

3) Even in Right to Work states – where employees have free choice to join or refrain from union membership – it is usually very difficult for employees to stop paying dues. Union officials write dues checkoff cards in microscopic fonts, and in language designed to be as confusing as possible. Moreover, these checkoffs are usually irrevocable for up to a year, and often contain confusing, short window periods and certified mail requirements, all designed to block the exit of even the most steadfast employee. See, e.g., *Stewart v. NLRB*, 851 F.3d 21 (D.C. Cir. 2017). (A copy of one such typical union dues checkoff card is attached). With one easy legislative change to NLRA Section 302, 29 U.S.C. § 186(c)(4), Congress could make all such dues checkoffs revocable at will, allowing employees to vote with their pocketbooks and freely change their minds. No one likes to be forced to pay for unwanted cable TV service or a gym membership because they misread the fine print in a contract crafted to mislead them, and the same should hold true for union dues deduction authorizations.

4) Thirty years after the Beck decision, *CWA v. Beck*, 487 U.S. 735 (1988), union officials continue to thumb their noses at that decision and collect and use forced dues for political advocacy and candidates over the objections of nonmembers. This leaves nonmembers like registered nurse Jeanette Geary with little choice but to fight decade-long legal battles to protect their free speech rights in the workplace.

Not surprisingly, in 2012 President Obama's NLRB ruled in Jeanette Geary's case that unions were legally permitted to charge nonmember Beck objectors for union lobbying expenditures because they were allegedly "germane" to collective bargaining, contract administration, or grievance adjustment. *United Nurses & Allied Professionals (Kent Hospital & Jeanette Geary)*, 359 NLRB 469, 474-75 (2012) ("The fact that the activity occurs within the political sphere does not change our core analysis. So long as lobbying is used to pursue goals that are

germane to collective bargaining, contract administration, or grievance adjustment, it is chargeable to objectors”).

Besides adopting this completely amorphous “germaneness” test for what is chargeable to nonmembers, and despite being completely wrong on the law of chargeability as established in *Beck* and the Supreme Court’s *Railway Labor Act* cases, that 2012 decision by the Obama NLRB was wrong for another fundamental reason: the Board Members who issued the decision were illegally appointed, because President Obama violated the constitution by making purported “recess appointments” when the Senate was not in recess. Thus, the initial 2012 decision in *Jeanette Geary’s* case, *Kent Hospital*, was void ab initio under *NLRB v. Noel Canning*, 573 U.S. 513 (2014).

In 2013, the NLRB achieved a quorum of validly confirmed members, and *Jeanette Geary’s* case was ready to be re-decided. However, instead of issuing a new decision promptly, the case languished for more than 5 years with no decision – presumably, at least in part, because Board members appointed by President Obama agreed with the constitutionally void 2012 decision. The Board did not issue a decision until after *Jeanette Geary* filed a mandamus petition in the D.C. Circuit to force the issuance of a decision and the court ordered the Board to respond to the petition. *In re Geary*, D.C. Cir. No. 19-1001.

Despite the long and tortured history of *Jeanette Geary’s* case, the NLRB finally ruled on March 1, 2019, that union lobbying is never chargeable to nonmembers. The Board relied on a host of Supreme Court and court of appeals cases to recognize that lobbying is pure political activity, which is outside of a union’s representational responsibilities and duties. In other words, the Board recognized that a monopoly bargaining representative is certified to represent employees vis-a-vis their employer, not to serve as a political spokesman, even where legislation is closely related to a collective bargaining topic and might directly affect bargaining or contract administration.

The bottom line is that a single dedicated employee, *Jeanette Geary*, was forced to wage a nine-year legal battle against well-funded union officials before the NLRB would finally draw a clear line to protect her right to not fund any political activity.

But none of this legal battle should have been necessary. At the least, nonmember employees like *Jeanette Geary* should be automatically “opted out” of paying for union political activities, rather than being automatically “opted in” and

then being forced to fight a nine-year legal battle to cease paying the political dues she should never have been charged in the first place. *Knox v. SEIU Local 1000*, 567 U.S. 298, 312 (2012) (“Shouldn’t the default rule comport with the probable preferences of most nonmembers? And isn’t it likely that most employees who choose not to join the union that represents their bargaining unit prefer not to pay the full amount of union dues? An opt-out system creates a risk that the fees paid by nonmembers will be used to further political and ideological ends with which they do not agree.”).

In short, the ruling in Jeanette Geary’s case is fully consistent with Beck and the First-Amendment-type interests that underlie all of the Supreme Court’s compulsory dues cases. Members of Congress should applaud this result, not attempt to overrule it legislatively. Indeed, they should do much more to protect employees’ rights to not fund organizations and causes they abhor.

5) Another recurring labor law issue is the lack of financial disclosure and transparency about how union officials actually spend dues money. The financial disclosures unions must make under the Labor Management Reporting and Disclosure Act (LMRDA) are woefully inadequate to actually disclose how union officials spend workers’ dues money. There are many recent and well-documented instances of union officials’ corruption that go undetected via the LMRDA reporting documents. See, e.g., *Feds suggest UAW/Fiat Chrysler scandal was wider conspiracy*, <https://www.freep.com/story/money/cars/chrysler/2018/06/13/uaw-fiat-chrysler-scandal-conspiracy/697774002/>; *Former UAW vice president charged in U.S. corruption probe*, <https://www.reuters.com/article/us-fiat-chrysler-corruption-uaw/former-uaw-vice-president-charged-in-u-s-corruption-probe-idUSKCN1QZ1RD>; *Philly union boss and councilman indicted in corruption probe*, <https://www.nbcnews.com/politics/justice-department/philly-union-boss-councilman-indicted-corruption-probe-n964731>; *Why Johnny Doc’s indictment is a problem for all Philly unions*, <https://www.philly.com/news/johnny-doc-dougherty-indictment-philadelphia-unions-ibew-20190204.html>. For the same reason that the LMRDA was enacted in the first place – widespread union corruption – the reporting requirements should be strengthened and vigorously enforced.

Finally, I have several other suggestions for labor law reform:

- 1) Pass the National Right to Work Act (S.525). This simple bill would end the problem of forced unionism. It would not add a single word to federal law. It would simply repeal the provisions of federal law that authorize union officials to force workers to pay union dues or fees to keep a job.
- 2) Pass the Secret Ballot Protection Act, to guarantee access to a secret ballot for union elections. "Card Check" is a corrupt means of attaining exclusive representation status without a secret ballot vote, in which unions intimidate or deceive individual workers one at a time, often in their own homes, into filling out a so-called "union authorization card," which then counts as a "vote" for the union. This bill would end that process, so workers could vote their consciences in a secret ballot election, free from the in-your-face coercion they often experience today.
- 3) Pass the Freedom from Union Violence Act, to criminalize union threats and violence. Since the Supreme Court's infamous 1973 Enmons decision, union bosses have been able to coordinate campaigns of violence and extortion, free from prosecution under the Hobbs Act, if their violence and extortion is in pursuit of so-called "legitimate union objectives." This bill would close this obscene loophole and let the law punish the union bosses who coordinate the violence, in addition to the thugs who physically perpetrate it.
- 4) Pass legislation requiring unions to periodically stand for recertification in a secret ballot vote. This would place the burden of proving continued majority support on union officials, rather than forcing individual employees to thread the complex and stumbling block laden decertification process. This and other provisions I have mentioned are included in the Employee Rights Act.

In closing, I wish to reiterate that the NLRA needs serious and prompt reform to protect employee free choice and increase union transparency. For too long union officials have been empowered by federal law to gain representational rights without a secret ballot election, and force employees to accept union representation and pay unwanted union dues or be discharged from their jobs. This is neither fair, appropriate or constitutional. Thank you for your attention, and I look forward to answering any questions the Committee Members may have.

Respectfully submitted,

/s/ Glenn M. Taubman

Chairwoman WILSON. Thank you, Mr. Taubman.  
We will now recognize Ms. Virk.

**STATEMENT OF MS. DEVKI K. VIRK, J.D., MEMBER, BREDHOFF  
& KAISER, PLLC, WASHINGTON, DC**

Ms. VIRK. Good morning, Chairperson Wilson, Ranking Member Walberg, members of the committee. I appreciate your inviting me to appear here before you today to address the need for reform of the National Labor Relations Act, and in particular, protecting workers' rights to organize.

The purpose of the act, as declared by the Congress that passed it, is to actively encourage the practice and procedure of collective bargaining by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment, or for other mutual aid or protection.

That is a direct quote from the preamble of the statute. And the drafters of the NLRA were well aware that meaningful self-organization and collective bargaining could not take place within a system where, as Congress put it, there existed substantial inequality of bargaining power between workers and employers.

The act addresses this problem procedurally by creating a framework, a set of ground rules essentially, that Congress thought would allow workers and their employers to engage on more equal footing.

In the American system of at-will employment, an employer enjoys substantial unilateral power to set the conditions of employment. Employers offer jobs on particular terms. Workers decide whether to accept those terms or to move on and find a different job.

Few workers have real ability to negotiate terms one-on-one with a potential employer. Further, if the employer changes the terms, workers can choose to stay and work under those terms or leave and find another job.

But what the NLRA envisions and what it creates is a third option: entitling workers to choose to have a meaningful voice in setting their own working conditions.

Unfortunately, in the decades since the NLRA was passed, this promise has not been kept. Interpretations of the law have diminished, burdened, and severely undermined the fundamental rights of workers—the right to self-organization and self-determination, the right to bargain collectively, the right to insist on better conditions, to publicize disputes, and to strike in support of what the workers believe that they deserve.

For many workers and unions, far from being a source of rights, the NLRA is a legal minefield that they would rather avoid. Indeed, one could argue that much of the statute's remaining potency lies in its enforcement of employer rights and its protection of employer prerogatives.

In fact, in my experience as a labor law practitioner, representing workers and their organizations, even when the current NLRA scheme works as well as it can, it falls dramatically short of the promise of the act.

In one case I handled, workers voted for the union by a two-to-one margin, but due to post-election objections and appeals, certification was not issued until almost 9 months later. And the employer stalled, refused to come to the table, and finally bribed employees to sign a petition saying they no longer wanted the union to represent them, and withdrew recognition exactly 1 year after certification had been issued.

We filed charges. There was a complaint. The board even authorized an injunction and won in court. Of course, the order issued by that court, which was the only order that it could issue, was an order directing the company to recognize and bargain with the union. No penalty, no damages, nothing else. And even under that expedited process, the order didn't issue until 2-1/2 years after the workers had voted overwhelmingly for the union.

In another case, workers at a manufacturing facility had a stable bargaining relationship that had lasted for decades, then the employer changed hands. The new spokesperson began bargaining by telling workers that in his eyes and the eyes of the employer, there was no contract and bargaining would begin from scratch.

They rejected the union's proposals with no explanation, took irrational positions, and insisted on concessions, including big cuts to employee healthcare. And when the union refused to agree, the company simply implemented its proposal.

Some workers, faced with huge premium increases and copays, were forced to forego office visits and ration medication for their children.

The board issued a complaint, a hearing was held, and a year after the company forced its offer on the workers, charges were sustained. But the company appealed. And faced with a choice between waiting for justice, likely years away, and addressing the urgent needs of members, the union returned to the bargaining table and reached an agreement.

These are examples of the system working.

It is time to rebuild the NLRA in the image that Congress first conceived. Workers should be able to decide promptly if they want a union to represent them. They should not have to be subject to employer anti-union captive meetings as a condition of employment, and they should not have to wait years to obtain an order of reinstatement if they are fired.

Employers who violate the act should face meaningful penalties and to comply with the board's orders promptly. The importance of a right is measured, at least in part, by how simple it is to exercise and how seriously we take its violation. The signal has been sent to workers and employers that workers' rights to organize and act collectively are not worth very much.

That, decidedly, was not the message that Congress meant to send when it enacted the NLRA. But at this point, if we want to change that message, we need to change the law so that workers who want representation on the job have an effective procedure to obtain that representation and an effective system to enforce the rights that the law provides.

Thank you for your attention. I look forward to your questions.  
[The statement of Ms. Virk follows:]

**TESTIMONY BEFORE THE  
HOUSE COMMITTEE ON EDUCATION AND LABOR,  
SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS  
UNITED STATES HOUSE OF REPRESENTATIVES**

March 26, 2019

*"Protecting Workers' Right to Organize: The Need for Labor Law Reform"*

**Devki K. Virk  
Bredhoff & Kaiser, P.L.L.C.  
Washington, D.C.**

Chairperson Wilson, Ranking Member Walberg, and Members of the Committee, thank you for the opportunity to testify today about the need for reform of our nation's basic labor law, the National Labor Relations Act.

My name is Devki Virk and I am a Member of the law firm of Bredhoff & Kaiser, P.L.L.C., in Washington, D.C. Since joining Bredhoff & Kaiser in 1996, I have represented labor organizations and workers in the public and private sector in a wide array of industries, including manufacturing, hospitality, public safety (fire and police), railway, and construction. In addition to litigation of various types, including in federal and state court and before administrative agencies, my practice is devoted to providing day-to-day advice regarding the rights of workers and their unions, and participating in collective bargaining and contract enforcement. After graduating from the University of Chicago in 1989, I worked for several years for a Chicago-based non-profit organization, and then obtained a law degree from the University of Illinois College of Law in Urbana-Champaign, graduating with honors in 1995 and serving as a law review editor and a teaching assistant for first-year contracts. Following law school, I clerked for the Honorable Martin L.C. Feldman, U.S. District Judge for the Eastern District of Louisiana in New Orleans from 1995-1996 before joining Bredhoff and Kaiser as an associate. I have been with the firm ever since.

**BACKGROUND**

As you know, the NLRA was adopted in 1935. It was amended significantly in 1947 with the passage of the Taft-Harley Act, narrower amendments were adopted in 1959 in the Landrum-Griffin Act, and in 1974 it was amended to extend coverage to non-

profit hospitals. Since that time, almost half a century, despite a persuasive case for reforming the law, it has remained unchanged. Under the Carter Administration, the Clinton Administration, and again under the Bush and Obama Administrations, a persuasive case for reform was brought to the Congress. Three times, comprehensive reform legislation was drafted, and bills were adopted in the House of Representatives, only to be thwarted by filibuster or a threat of filibuster in the Senate. As a result, the essential flaws in the Act identified remain largely unaddressed and, in fact, have only worsened over time.

As a practitioner, I have seen working people come together and, in doing so, meaningfully and dramatically change their lives and the lives of their families. Dishwashers, once scraping by working for multiple employers, are able put their children through college on one good job. Firefighters join together to strengthen safety standards and raise awareness of health issues prevalent in their profession. Manufacturing workers unite to resist massive employer concessions and ultimately are able win protection from plant closures at the bargaining table. Workers who have spent their lives with dangerous chemicals can retire with adequate health care coverage for themselves and their spouses. In my years of practice, I have seen many examples of the power of worker self-determination.

Unfortunately, I have also seen, far too often, examples of utter failure of our system of labor law, instances in which workers in need of protection were left vulnerable, deprived of their basic statutory rights, and told they must wait years for any redress. In multiple areas, the NLRA, as currently construed, fails to ensure workers meaningful access to or enforcement of the rights that it was enacted to establish. In my brief time today, I will focus on only four specific problems with the existing law – its allowance of unfair and coercive conduct, its insufficient mechanisms for insuring good faith collective bargaining, the inadequacy of its remedies, and its failure to extend even the limited protections that it does offer to the full range of workers who need it.



### **SELECTED PROBLEMS**

#### **1. Unfair and Coercive Campaign Practices**

First, some practices that have been held lawful under the NLRA are clearly unfair and grossly distort both the freedom of choice and the balance of power the Act was intended to create.

Specifically, the current law permits employers to force employees, upon pain of termination, to listen to their employers (or consultants or lawyers hired by their employers) tell them all of the reasons that they should not vote to be represented by a union – chief among them that the employer does not want to deal with the Union. These mandatory meetings can be held with a large group of employees, a subgroup (such as a department or shift), with small groups of employees, or even one or more employer representatives in a room with one employee.

These sessions – called “captive audience” meetings – have been permitted by the Act for decades. *See Babcock & Wilcox Co.*, 77 NLRB 577 (1948) (captive audience meetings are not unfair labor practice); *S & S Corrugated Papers Mach. Co.*, 89 NLRB 1363 (195) (captive audience meetings do not interfere with fair election). As one Board Member clearly explained, “the Act does not preclude an employer from calling his employees together as a ‘captive audience’ to hear his anti-union views.” *J.P. Stevens & Co.*, 219 NLRB 850, 854 (1975) (Member Fanning concurring in part and dissenting in part), *enfd*, 547 F.2d 792 (4th Cir. 1976).<sup>1</sup> If the meeting takes place in a group setting, employers can also exclude union supporters from such meeting or prevent them from speaking to ensure there is no free discussion or debate. *See Luxuray of New York*, 185 NLRB 100 (1970), *enfd in part*, 447 F.2d 112 (2d Cir. 1971); *F.W. Woolworth Co.*, 251 NLRB 1111 (1980), *enfd*, 655 F.2d 151 (8th Cir. 1981), cert. denied, 455 US. 989 (1982). An employee who has the “temerity to ask questions” may be fired. *See NLRB v. Prescott Indus. Prod. Co.*, 500 F.2d 6, 11 (8th Cir. 1974). And lest there be any mistake about what compels attendance at captive audience meetings, the Board has upheld the

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<sup>1</sup> Prior to 1947, the Board held such captive audience meetings were unlawful. *See Clark Bros. Co.*, 70 NLRB 802 (1946), *enforced as modified*, 163 F.2d 373 (2d Cir. 1947).

firing of employees who quietly and without disruption attempt to leave such meetings, holding that employees have “no statutorily protected right to leave a meeting which the employee were required to attend on company time and property to listen to management’s noncoercive antiunion speech designed to influence the outcome of a union election.” *Litton Sys., Inc.*, 173 NLRB 1024, 1030 (1968). Unsurprisingly, these speeches have both the purpose and effect of further tilting the balance in favor of employers.

Such inherently unfair practices are the norm under the current law. A study of over 200 representation elections found that employers conducted mandatory meetings prior to 67 percent of the elections. See John J. Lawler, *Unionization and Deunionization: Strategy, Tactics, and Outcomes* 145 (1990). A more recent study found that in 89 percent of campaigns surveyed, employers required employees to attend captive audience meetings during work time and that the majority of employees attended at least five such meeting during the course of the campaign. See Kate Bronfenbrenner & Dorian Warren, *The Empirical Case for Streamlining the NLRB Certification Process: The Role of Date of Unfair Labor Practice Occurrence*, ISERP Working Paper Series 2011.01 at 6 (June 2011), available at [iserp.columbia.edu/research/working-papers](http://iserp.columbia.edu/research/working-papers).

And, because the employer has control over the workplace – and the livelihood of the employees it forces to attend these meetings – these practices also favor the employer because, by reason of its coercive power, the employer is able to communicate its message to *all* eligible voters, whether or not they want to hear it, while leaving the union able to communicate only with those it can persuade to listen. One study of union elections demonstrates the obvious result – unions typically communicate largely with their supporters while employers, who can compel attention, also reach undecided and opposing voters. See J. Getman, S. Goldberg & J. Herman, *Union Representation Elections: Law and Reality* (1976).

Congress should and can prevent this obviously unfair practice. As Justice William O. Douglas recognized in *Public Utilities Commission v. Pollak*, 343 U.S. 451, 468 (1952) (Douglas, J., dissenting), it is “a form of coercion to make people listen.” And although those words appear in a dissent of Justice Douglas, a majority of the

United States Supreme Court has subsequently recognized that “no one has a right to press even ‘good’ ideas on an unwilling recipient.” *Rowan v. United States Postal Office Dept.*, 397 U.S. 728, 738 (1970). In fact, the Court has stated that “[t]he unwilling listener’s interest in avoiding unwanted communications has been repeatedly identified in our cases” as a proper basis for narrowly tailored government regulation. *Hill v. Colorado*, 530 U.S. 703, 716 (2000).

## **2. Inadequate Mechanisms for Encouraging Good Faith Bargaining**

Second, in several respects, the Act fails in its central objective -- “encouraging the practice and procedure of collective bargaining.” 29 U.S.C. § 151. That is true because the Act has been construed to provide no meaningful remedy for employers’ failure to bargain in good faith while at the same time employees’ right to strike in order to encourage good faith bargaining has been gutted.

Section 8(a)(5) of the current Act makes it an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of his employees.” 29 U.S.C. § 158(a)(5). Yet in most circumstances, if an employer simply refuses to bargain or engages in surface bargaining, going through the motions with no intention of reaching an agreement, the remedy consists of an order that the employer cease and desist such unlawful conduct.

In *H.K. Porter Co. v. NLRB*, 397 U.S. 99 (1970), eight years went by after the employees voted to be represented by a union. The Supreme Court observed that the delay “appears to have occurred chiefly because of the skill of the company’s negotiators in taking advantage of every opportunity for delay.” *Id.* at 100. Specifically, both the Board and the Court of Appeals found that the employer’s refusal to agree to a standard clause permitting employees to voluntarily have their union dues deducted from their wages was not in good faith, but rather “was based on a desire to frustrate agreement and not on any legitimate business reason.” *Id.* at 107. The Court of Appeals further held that the Board could order the employer to agree to such a clause. But the Supreme Court reversed, holding that the current law bars the Board from ordering either party to agree to any provision of an agreement.

Not only can the Board not require a party to agree to any term, even as a remedy for unlawful conduct, it cannot compensate employees injured by an employer's unlawful refusal to agree to a term of employment. In *Ex-Cell-O Corp.*, 185 NLRB 107 (1970), the employer wholly refused to bargain with the employees' chosen representative, in defiance of the Board's order that it do so following the employees' voting for representation in a Board-supervised election.<sup>2</sup> In the resulting unfair labor practice proceeding, the trial examiner both ordered the employer to bargain and "to compensate its employees for monetary losses incurred as a result of its unlawful conduct." *Id.* at 108. But the Board reversed, holding that current law and the Supreme Court's decision in *H.K. Porter* do not permit employees to receive compensation for the injuries suffered as a result of an unlawful refusal to bargain. The Board clearly explained the regrettable consequences of its decision:

We . . . are in complete agreement with his finding that current remedies of the Board designed to cure violations of Section 8(a)(5) are inadequate. A mere affirmative order that an employer bargain upon request does not eradicate the effects of an unlawful delay of 2 or more years in the fulfillment of a statutory bargaining obligation. It does not put the employees in the position of bargaining strength they would have enjoyed if their employer had immediately recognized and bargained with their chosen representative. It does not dissolve the inevitable employee frustration or protect the Union from the loss of employee support attributable to such delay. The inadequacy of the remedy is all the more egregious where . . . the employer had raised 'frivolous' issues in order to postpone or avoid its lawful obligation to bargain.

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<sup>2</sup> It should be noted that this procedure, commonly called a "technical refusal to bargain," although there is nothing "technical about it whatsoever, represents another flaw in the current law in two respects. First, because the Board's certification that employees have voted to be represented is accompanied by no order that the employer respect that choice by commencing bargaining, an entirely separate proceeding is necessary in order for the Board to issue such an order. This obviously causes significant delay in bargaining when an employer refuses to respect its employees' express desires. Second, because the results of the initial representation case are not directly appealable by any party, only employers can obtain judicial review of decisions in representation cases via such a technical refusal to bargain. Over time, of course, permitting only employers to obtain judicial review tilts the construction of the law in their favor.

*Id.* at 108. The Board concluded, “Much as we appreciate the need for more adequate remedies in 8(a)(5) cases, we believe that, as the law now stands, the proposed remedy is a matter for Congress, not the Board.” *Id.* at 110.<sup>3</sup>

Absent adequate legal remedies, you might think that the current law at least gives employees the right to strike as a last resort when their employers will not address legitimate grievances and desires at the bargaining table. But, in reality, that is also not the case.

Certainly, the current law was *intended* to protect the right to strike. The express language of the Act makes that purpose clear: Section 13 provides, “Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.” 29 U.S.C. § 163. And the NLRB has repeatedly held that employees are protected by the Act when they strike. *See, e.g., California Cotton Cooperative Ass’n*, 110 NLRB 1494, 1556 (1954). Indeed, the Supreme Court had recognized that “the right to strike” is at the “core” of the system of collective bargaining envisioned by Congress. *Business Employees v Missouri*, 374 US 74, 82 (1963). That is because employees’ ability to strike as a last resort when their legitimate concerns are not addressed “in great measure implements and supports the principles of the collective bargaining system.” *NLRB v Erie Resistor Corp.*, 373 US 221, 234 (1963).

But the core right to strike has been hollowed out over the years. The protection accorded strikers has become little more than nominal, and the type of strikes that receive even that protection have been unjustifiably narrowed.

While the law on its face protects workers who exercise the express right to strike, most employees perceive that protection as nothing more than a legal technicality that must be observed by employers who are permitted to “permanently replace” but not fire strikers. That perverse construction of the statutory right resulted from dicta in the 1938 Supreme Court case of *NLRB v Mackay Radio & Telegraph Co.*, 304 U.S. 333, 346

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<sup>3</sup> It should also be noted that the Board’s refusal to compensate employees for losses due to an employer’s refusal to bargain or failure to bargain in good faith is not limited to the context of a “technical refusal to bargain,” but extends across-the-board to all such violations excepting only losses due to unilateral changes imposed by employers without bargaining.

(1938) (“The assurance . . . to those who accepted employment during the strike that if they so desired their places might be permanent was not an unfair labor practice . . .”). It is now settled law that employers can permanently replace striking workers. *See, e.g., Hot Shoppes, Inc.*, 146 NLRB 802 (1964). Strikers cannot be fired, but if their jobs are taken by replacement workers who are promised permanent status, the strikers retain only a right to be recalled should a position open up in the future. *See Laidlaw Corp.*, 171 NLRB 1366 (1968). Employer need not even make a showing that permanent replacement is needed to maintain operations, *i.e.*, that temporary replacements are not sufficient or that supervisors and managers cannot fill in for striking employees.

The only exception to employers’ ability to permanently replace employees who exercise the right to strike is if the strike is motivated by the employer’s unfair labor practices. *See Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956). That exception is itself, at least from a remedial standpoint, an odd one, since employees have a legal means through which to redress employer unfair labor practices – filing a charge with the Board. In contrast, “economic” strikers have no such alternative means effectively to force their employer to address their legitimate claims at the bargaining table.

Not only does current law extend what employees rightly perceive as hollow protection to the right to strike, that protection only extends to a narrow category of strikes. Despite the unqualified language in the NLRA (“Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.”), both the Supreme Court and the NLRB have held that a variety of types of strikes are unprotected altogether, including partial strikes and intermittent strikes. Thus, if employees’ primary grievance is that they are being forced to work excessive overtime, raising the risk of accidents in a factory or errors in a hospital, and, after unsuccessful airing their concern with their employer, the employees decide that, rather than causing much more significant disruption with a complete and open-ended strike, they will simply refuse to perform the overtime, the “partial strike” is unprotected, exposing the more cautious employees to termination. *See, e.g., Lake Development Mgmt. Co.*, 259 NLRB 791 (1981). Similarly, if employees’ concern is about arbitrary or discriminatory discipline and rather than completely shut down their employer’s operation they resolve to strike over each such action, they risk termination for engaging in an “intermittent

strike.” See, e.g., *NLRB v. Insurance Agents’ International Union, AFL-CIO*, 361 U.S. 477 (1960); *International Union, United Automobile Workers, Local 232 v. Wisconsin Employment Relations Board (Briggs-Stratton)*, 336 U.S. 245 (1949);<sup>4</sup> *Embossing Printers, Inc.*, 268 NLRB 710 (1984). While these and other limitations on the right to strike find no support whatsoever in the text of the current law, they are well-established in the Board’s jurisprudence. Thus, the current law appears to force employees into more rather than less disruptive forms of strikes and to force them into the form of strike that most exposes them to retaliation in the form of permanent replacement.

That result is of a piece with the dismantling of the law. An Act expressly intended to encourage “the practices and procedures of collective bargaining” has not done so. In fact, a recent study of representation elections conducted by the NLRB between 1999 and 2003, found that despite employees voting to be represented for purposes of collective bargaining, in a majority of cases no agreement had been reached a year after the election. Two years later, a third of the workplaces still had no agreement in place and three years later approximately 30% still had no collective bargaining agreement. Ross Eisenbrey, *Employers can stall first union contract for years*, Economic Policy Institute (May 20, 2009), at [https://www.epi.org/publication/snapshot\\_20090520/](https://www.epi.org/publication/snapshot_20090520/) (citing study by Cornell University Professor Kate Bronfenbrenner).

### **3. Inadequate Remedies for Violations**

Third, the Act’s inadequate remedies for unlawful conduct not only fail to deter or fully remedy violations, but rather actually encourage unlawful practices. The National Labor Relations Act, as compared to many other employment-related laws, provides only limited remedies for violations. Section 10(c) of the NLRA limits the remedies to a cease and desist order and, in the event of an unlawful firing, reinstatement with back

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<sup>4</sup> *Briggs-Stratton* was overruled in *Lodge 76, International Ass’n of Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), but only to the extent it permitted state agencies to enjoin intermittent strikes. Together, the three Supreme Court cases construe the NLRA to permit employers to retaliate against employees who choose to strike intermittently instead of continuously. See *Insurance Agents*, 361 U.S. at 493.

pay, along with a required posting. By comparison, victims of race- or sex-based discrimination are eligible for compensatory and, in some cases, punitive damages under Title VII of the Civil Rights Act. Plaintiffs who bring a claim for unpaid wages or overtime under the Fair Labor Standards Act can recover liquidated damages in addition to their lost wages because Congress recognized that withholding employees pay is likely to “result in damages too obscure and difficult of proof for estimate other than by liquidated damages.” *Brooklyn Savings Bank v. O’Neil*, 324 U.S. 697, 707 (1945). And, in a slightly different context, federal antitrust law permits treble damages for those injured by violations of competition law.

The lack of effective remedies under the NLRA is of obvious importance for individual workers who are fired for organizing a union or engaging in other protected activity under Section 7 of the NLRA. But limited remedies also result in noncompliance with the NLRA because employers calculate that non-compliance is less costly in the long run – because by defeating an organizing drive they may avoid having to engage in collective bargaining with their employees – than following the law.

As a result, even though it is illegal to fire workers for organizing a union, employers nevertheless do it all the time, because they know what a chilling effect this has on the organizing campaign, and they know the consequences they will face are little more than a slap on the wrist. Data shows that one-third of employers fire workers during organizing campaigns.<sup>5</sup> And that some 15% to 20% of union organizers or activists can expect to be fired as a result of their activities in a union election campaign.

The NLRB investigates hundreds of charges of illegal firings and retaliation each year. In fiscal year 2018, the NLRB obtained 1,270 reinstatement orders from employers for workers who were illegally fired for exercising their rights under labor law, and the NLRB collected \$54 million in back pay for workers.<sup>6</sup> But because there are no significant monetary penalties against employers who illegally fire workers – only the back pay that the employer would have been paying the worker all along, minus any

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<sup>5</sup> Josh Bivens et al., “How today’s unions help working people.”

<sup>6</sup> National Labor Relations Board, NLRB Performance Reports–Monetary Remedies/Reinstatement Offers, accessed February 2019.



wages the worker did or could have earned in the meantime – employers just keep on firing workers when they try to organize a union.

To make matters worse, even where a violation of the NLRA can be proven, there is frequently a very lengthy delay between when a worker is fired and any offer of reinstatement. Proving that a firing is illegal typically requires an investigation by the NLRB's regional office, a hearing before an administrative law judge, and a decision by the National Labor Relations Board itself. Even then, Board orders are not self-enforcing, so employers routinely simply refuse to comply with the Board's orders or appeal those orders to the federal courts of appeals for purposes of delay. In the meantime, the fired worker can only wait. By the time the Board's order is finally enforced, often several years after the worker was fired, the union organizing drive is long over and, more often than not, the employee has been forced by circumstances to find other work and thus never returns to the workplace. The Board's remedies are, therefore, not only ineffective deterrents to employer lawbreaking economically, but also practically, as employees never get to see an unlawfully fired employee made whole by returning to the workplace at a time when it still matters for an organizing drive.

In strong contrast to the delay that characterizes remedies for unlawful employer behavior under the NLRA, federal labor law *requires* the Board to go to federal district court to seek an injunction anytime a union engages in unlawful picketing or strike activity. *See* 29 U.S.C. § 160(l). Astoundingly, the law contains no parallel requirement that the Board do the same when an employer violates the NLRA, even when that violation involves firing workers for organizing a union. *Compare* 29 U.S.C. § 160(j). Because there is no such requirement in the law, the Board only rarely seeks an injunction to put a fired worker back on the job.

Even more to the point, remedies are not just delayed but basically non-existent for a substantial proportion of cases filed with the Board. For example, in cases where an employer has illegally threatened workers who wish to organize but has stopped short of suspending or firing anyone for union activity, the sole remedy available is the posting of a notice promising not to do it again. (When it happens again, the remedy remains the same: a notice must be posted or, in particularly egregious cases, read by a manager to assembled workers.) The same notice posting "remedy" is given in cases

where an employer illegally stalls negotiations for months on end, and refuses to deal with the workers' chosen representatives. And in cases where the employer unilaterally changes terms without negotiating, or deals directly with employees, and otherwise undermines the workers' chosen representatives, the remedy is limited to a notice posting – accompanied by an order to rescind the unilateral changes upon request. These violations, which constitute breaches of the core principles of the Act, simply have no consequences.

An effective Act requires meaningful penalties for violations and a faster process for putting unlawfully-fired workers back to work. Without such reforms, the right to organize and act collectively, as promised by federal labor law, will largely remain an abstraction rather than a reality.

#### 4. Inadequate Coverage of Workers

Finally, the Act, as currently construed, does not extend even these limited protections to many workers who could benefit from coverage. I will touch briefly on two such categories.

***Independent Contractors.*** The growth of Uber, Lyft, Instacart, GrubHub, and the hundreds of other “gig economy” services that perform tasks on a per-job basis has focused attention on the distinctions between a worker classified as an “employee” and one classified as an “independent contractor,” and the implications of that distinction.<sup>7</sup> Those implications are substantial, and govern everything from which

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<sup>7</sup> According to the most recent Contingent Worker Supplement published by the Bureau of Labor Statistics, approximately 10% of workers receive their primary source of income from “contingent” work, which is a category that includes freelancing, gig work, and other work as a non-employee. U.S. Bureau of Labor Statistics, “Contingent and Alternative Employment Arrangements – May 2017” (Washington, DC: U.S. Department of Labor, 2018), <https://www.bls.gov/news.release/pdf/conemp.pdf>. Of course, that survey does not count the substantial additional percentage of the workforce who supplements income through engaging in contingent work, many of whom do so because their primary earnings are insufficient to sustain themselves and their families.

See also generally, the data hub maintained by the Future of Work Initiative and the Cornell School of Industrial and Labor Relations that focuses on the “gig economy,” <https://www.gigeconomydata.org/> (last visited 3/23/19).

party – company or worker – must pay employment taxes; whether the worker is entitled to minimum wages, overtime, and leave protection; who bears the risk if the worker is injured on the job; and on and on. Significantly for this Committee, the distinction between classification as an “employee” and an “independent contractor” also governs whether a worker has rights under the NLRA, including the right to organize with others, and engage in collective bargaining – and collective action -- to better their terms and conditions.

Although new technological capabilities have brought this issue to the fore, misclassification – that is, a worker who is really an employee but who is classified as an “independent contractor” – is not new problem. Nor is it limited to these types of workers: historically, everyone from miners to waiters, and from janitors to seamstresses performing piecework has been dubbed an “independent contractor.” Categorizing workers as “independent contractors” has always been economically and legally beneficial for employers.

And, although the scale and presentation of the problem may be different, the criteria used to distinguish employees from independent contractors have – at least on paper -- remained the same. The Supreme Court set out the test fifty years ago, in *NLRB v. United Insurance Co. of America*, 390 U.S. 254 (1968). As the Court there explained, “There are innumerable situations which arise in the common law where it is difficult to say whether a particular individual is an employee or an independent contractor. . . . *There is no shorthand formula or magic phrase that can be applied to find the answer, but all of the incidents of the relationship must be assessed and weighed with no one factor being decisive.*” What is important is that the total factual context is assessed in light of the pertinent common-law agency principles.” *Id.* at 258 (footnote omitted; emphasis added). The NLRB expressly adopted that open-ended test, most clearly in its unanimous 1998 decision in *Roadway Package System*, 326 NLRB 842, and reaffirmed it in its decision in *FedEx Home Delivery*, 361 NLRB 610 (2014).

This January, however, the NLRB abandoned that approach, and instead adopted a new formulation that purports to measure the degree of “entrepreneurial opportunity” available to the worker, and makes that factor paramount in determining employee

status. *SuperShuttle DFW, Inc.*, 367 NLRB No. 75 (slip op., Jan. 25, 2019). Notably, although the Restatement (Second) of Agency §220(2) lists ten factors that should be considered in that determination, “entrepreneurial opportunity” is not among them. By placing that concept at the forefront of the analysis, “[t]he [Board’s] majority seems to have been bewitched by just the sort of “magic phrase” the Supreme Court warned about,” *id.* at 19, as Member McFerran observed in her dissent.

Moreover, the notion of “entrepreneurial opportunity” is itself amorphous and unlikely to provide guidance to either workers or companies. The *SuperShuttle* case is in itself illustrative: there, the Board majority found that airport van drivers were “independent contractors” even though the company “perform[ed] the very core of its business” with these drivers, who were “unskilled workers,” were “otherwise prohibited from working in the industry,” and who were required to accept payment from fares set by the company, adhere to company standards, and sign a “uniform agreement” imposed upon them by the company. *Id.* at 25. But on very similar facts, the Board has earlier found such workers to be “employees” entitled to the Act’s protections. *E.g.*, *Stamford Taxi*, 332 NLRB 1372 (2000); see also *Prime Time Shuttle*, 314 NLRB 838 (1994). Although the common law factors that the Supreme Court directed the Board to use, *United Insurance*, *supra*, are not mathematically precise, they are well-established, and their interpretation has been informed by decades of case law. In contrast, the *SuperShuttle* assessment of “entrepreneurial opportunities” depends in large measure on the eye of the beholder. For the Act to work as it was intended, employee status, and its attendant rights, should not be subject to such inconsistency.<sup>8</sup>

**Supervisors.** Contrary to Congress’s clear and repeatedly stated intent, the exclusion of “supervisors” from the protections of the National Labor Relations Act has developed into a source of contention over the status of employees, such as nurses, who

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<sup>8</sup> *SuperShuttle* is one of several cases decided by the new majority Trump-appointed Board that reversed existing Board precedent and substituted rules favored by employers. See also *PCC Structurals, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017), overruling *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013) (bargaining unit determinations); see also *Hy-Brand Industrial Contractors, Ltd. (Hy-Brand I)*, 365 NLRB No. 156 (2017) (overruling *Browning Ferris Indus.*, 362 NLRB No. 186 (2015) (joint employer standard)).

exercise a degree of responsibility in performing their jobs. The result has been to leave employers, unions and the employees themselves uncertain over who is or is not protected by the Act. This uncertainty not only leads to prolonged disputes over the status of certain key employees, it also directly interferes with the ability of contested employees who are not supervisors to exercise their rights under the Act.

When Congress amended the NLRA in 1947 to exclude “supervisors,” it clearly stated its intent to exclude only those individuals who are “vested with such genuine management prerogatives as the right to hire or fire or discipline or to make effective recommendations with respect to such action” and not to exclude “straw bosses, lead men, set-up men, and other minor supervisory employees.” S. Rep. No. 105, 80th Cong., 1st Sess. 4 (1947). As Senator Taft put it, the exclusion was “limited to bona fide supervisors, . . . to individuals regarded as foremen and employees of like or higher rank.” 93 Cong. Rec. 6442 (1947).

For many decades following enactment of the supervisory exclusion, the NLRB was faithful to Congressional intent, classifying as employees rather than supervisors those professionals, journeymen construction workers and other skilled and experienced employees who primarily worked at their profession or craft but also had limited authority to assign work and direct other employees to perform discrete tasks. *See Southern Bleachery and Printworks, Inc.* 115 NLRB 787, 791 (1956) (highly skilled employees whose primary function is physical participation in the production or operating processes of their employers' plants and who incidentally direct the movements and operations of less skilled subordinate employees based on their working skill and experience not supervisors); *Skidmore, Owings & Merrill*, 192 NLRB 920, 921 (1971) (architect who as project leader gave directions to others did so only to ensure quality of work on project and, in this capacity, was acting according to professional norms, not supervisory status).

In 1967, the Board extended its jurisdiction to for-profit healthcare facilities and began to apply its construction of the supervisor definition to so-called “charge nurses,” i.e., “the nurse, RN or LPN, on a particular shift who is responsible for seeing that the work is done, that medicines are administered to the patients, that the proper charts are kept, and that the patients receive whatever treatment has been prescribed.” *Abingdon*

*Nursing Center*, 189 NLRB 842, 850 (1971). Between 1967 and 1974, the Board decided numerous charge nurse cases, generally finding that the charge nurses were not supervisors, either because the nurse's actions were not performed with independent judgment, or in the case of RN's, because they directed others not as an exercise of supervisory power in the interest of the interest of the employer, but as a manifestation of their professional skill and training. See, e.g., *Madeira Nursing Center*, 203 NLRB 323, 324 (1973) (finding that RNs and LPNs who issued work assignments to aides were not supervisors because independent judgment was not required as assignments either were in accord with scheduling issued by director of nursing or were dictated by needs of patients); *Doctors Hospital of Modesto*, 183 NLRB 950, 951-52 (1970) (distinguishing between nurses who exercise authority as a product of their professional duties and those who are vested with true supervisory authority such as power to affect job and pay status).

In 1974, when Congress extended the jurisdiction of the Act to cover not-for-profit hospitals, it expressly relied on these and similar decisions by the Board in concluding that it was unnecessary to amend the Act to expressly protect health care professionals, including registered nurses, from being considered supervisors on the basis of the direction they routinely give to other employees. The Senate report explained that such an amendment was unnecessary, because the Board's decisions had "carefully avoided applying the definition of 'supervisor' to a health care professional who gives direction to other employees in the exercise of professional judgment, which direction is incidental to the professional's treatment of patients, and thus is not the exercise of supervisory authority in the interest of the employer." S. Rep. No. 93-766, 6 (1974). See also H.R. Rep. No. 93-1051, 7 (1974) (stating that amendment to supervisor definition is unnecessary given Board's prior precedent).

The Board continued on the course that Congress had endorsed until the 5-4 decision in *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571 (1994), rejected the Board's approach as inconsistent with what the five-member majority considered the "plain meaning" of the statutory language. In the 15 years following the Supreme Court's decision in *Health Care*, controversy over the application of the supervisor definition to nurses and other professionals as well as other sorts of skilled

employees and “team leaders” who provide direction to less skilled or experienced co-workers has engendered expensive and wasteful litigation that delays the NLRB election process and deprives workers of the right to freely choose whether to be represented for purposes of collective bargaining that is supposed to be guaranteed them of the Act.

In 2000, the issue returned to the Supreme Court, resulting in another 5-4 decision in the case of *NLRB v. Kentucky River Community Care Inc.*, 532 U.S. 706 (2001), again rejecting another attempt by the Board to harmonize the literal language of the statute with Congress’ expressed intent not to exclude professionals and others with minor supervisory authority from the protections of the Act. After that, in *Oakwood Healthcare*, 348 NLRB No. 37 (2006), the NLRB essentially abandoned the effort to reconcile the statutory definition with Congressional intent, adopting a reading of the statutory terms that threatens to exclude from coverage countless nurses and other professionals, as well as skilled craft workers who typically direct the work of less skilled employees.

While the problem of categorizing highly trained and highly skilled workers began with nurses, it soon spread to other categories of workers. See, e.g., *Entergy Mississippi, Inc.*, 357 NLRB 2150 (2011) (where the Board split over whether utility dispatchers were supervisors). The resulting confusion creates serious problems for employers, union, and, most especially, for those workers whose status is in question.

Because supervisors are not covered by the Act, a supervisor can be disciplined or fired for engaging in pro-union activity. And under current Board law, a supervisor can also lawfully be conscripted to participate in the employer’s efforts to prevent workers from forming a union. See, e.g., *Western Sample Book and Printing Co.*, 209 NLRB 384, 389-90 (1974). Supervisors who express qualms or are seen as insufficiently committed to the anti-union effort can and do lose their jobs. *Western Sample Book and Printing Co.*, *supra*; *World Evangelism, Inc.*, 261 NLRB 609 (1982); *Crouse-Hinds*, 273 NLRB 333 (1984).

This puts the contested workers in an impossible situation. If they are found to be “supervisors,” they could be lawfully fired for supporting the organizing efforts of

their co-workers or even for refusing an employer directive to actively oppose those efforts. The NLRB litigation process can drag on for years before the status of an affected individual would be finally settled. Given the risks, it would take a particularly hardy union-support to insist on her rights to support – or at least not oppose – the organizing efforts of her co-workers.

The employer, too, is put in a difficult position. If it calls upon an individual to oppose an organizing campaign who turns out to not be a “supervisor,” the employer will have committed an unfair labor practice. In addition, that conduct could constitute grounds for re-running a representation election.

On the other side of the equation, a finding that a particular individual is a supervisor and not an employee can have a devastating effect on the organizational rights of the other employees in the workplace. Under *Harborside Healthcare Inc.*, 343 NLRB No. 100 (2004), the participation by a supervisor in pro-union activities can be grounds for setting aside a vote by the employees in favor of unionization, even if the employer itself vigorously opposed the union and made that opposition known to the workforce. Thus in *SNE Enterprises*, 348 NLRB No. 69 (2006), the Board overturned the results of an election in which the employees voted in favor of the union because two lead persons—whose sole authority over the other employees consisted of the ability to assign workers to different production line tasks as needed—had participated in soliciting authorization cards used only to support the filing of a petition for an election. The Board held that the leads’ actions on behalf of the union were “inherently coercive,” even though the leads had voted as employees, without objection, in three previous NLRB elections, didn’t regard themselves and weren’t regarded by co-workers as supervisors, and ceased their card solicitation three months before the election, when the employer—who had meanwhile actively campaigned against the union—informed them that it considered them to be supervisors.

The Act should be amended to expressly incorporate the definition of “supervisor” reflected in the Board decisions approved by Congress in 1974, when it failed to foresee that without such an amendment the Supreme Court would interpret



the Act to thwart the intent that the exclusion for supervisors would “limited to bona fide supervisors,” 93 Cong. Rec. at 6442, and not reach “minor supervisory employees,” like “lead men,” S. Rep. No. 105 at 4.

### **CONCLUSION**

Almost 50 years ago, in *H.K. Porter*, discussed above, the Supreme Court acknowledged that “[i]t may well be true . . . that the present remedial powers of the Board are insufficiently broad to cope with important labor programs.” 397 U.S. at 109. “But,” the Court continued, “it is the job of Congress, not the Board or the courts, to decide” whether enhanced remedial authority is merited. *Id.* The past 50 years has demonstrated conclusively that enhanced remedies and other amendments to the NLRA are necessary to fulfill the original promise of our labor laws. Among those amendments that would be the most meaningful are the following:

- \* A strong regime of enforcement mechanisms and remedies to deter violations, and provide meaningful, reasonably prompt remedies. Such a regime would include civil penalties, including mandatory minimum penalties for violations such as illegal threats or coercion, refusals to deal in good faith, or other violations that do not involve direct monetary damage to individuals. It would also include a requirement that the Board seek injunctions to reinstate workers fired for engaging in protected activity. Finally, it would include provision to place Board orders on the same, self-enforcing footing as the orders of other federal agencies – rather than requiring the Board to seek enforcement of its orders before the Courts of Appeal.

- \* Measures to ensure that employees can make meaningful, non-coercive choices about representation, including, most importantly, prohibiting employers from requiring employees to attend “captive audience” meetings or otherwise forcing them to listen to the employer’s message.

- \* Provisions designed to facilitate collective bargaining in first contract situations, including mandatory mediation and interest arbitration to resolve disputes.

- \* Provisions discouraging misclassification of workers as “independent contractors” or “supervisors,” and adopting clarifying statutory language so that such determinations have stability, and no longer rest as greatly in the eye of the beholder.

Chairwoman WILSON. Thank you, Ms. Virk.

We will now proceed to member questions. Under committee rule 8(a), we will now question witnesses under the 5-minute rule. I will now yield myself 5 minutes.

Ms. Harper, I understand that you worked at the plant before it was bought by Fuyao, and during that time you had a union. Can you compare what it was like working at the plant when you had a union and what it was like without a union?

Ms. HARPER. When I worked at General Motors Truck and Bus with the union, we had a safety committee, we had an ergonomic committee. We also had a seniority rule, that if you had time in, that you could bid for jobs and then get the jobs.

It was a nice environment because we had a suggestion process where we could make suggestions on how the job—the person that was actually operating the job could make the suggestion on how to improve that job. That was the benefit of having a union.

At Fuyao, not having the union, we had a lot of safety issues, which I listed in my testimony, and it was pretty much a fear going in every day on whether you were going to go home safe or see your family because of all of the things that were out of place in there. They would put you on whatever job they wanted to, take you off of the job even if you were the senior person.

But the most important thing, at the end of the day, we wanted to go home to our families and make that place a better place. So not having a union was very unfortunate. And I know that it still persists because in 2018 one of the coworkers we had there was crushed in between a ton of glass. And that was one of our safety concerns, that we feared the way they had us loading that glass, and the forklift drivers getting off and then standing between the glass.

So that was the difference.

Chairwoman WILSON. I want to thank you for being here today, Ms. Harper, and for telling us that story. And believe me, we, on this committee, will fight for you and all Americans who exercise their rights to negotiate for better pay, safety, and better working conditions. Thank you.

Dr. Rosenfeld, your testimony cites 2018 polling data from Gallup indicating that 62 percent of Americans approve of unions. An MIT survey found that almost 50 percent of nonunion workers would vote for a union if given the opportunity.

How do you explain the gap between the large percentage of workers who would like to be in a union and the fact that around only 6 percent of private sector workers have a union today?

Dr. ROSENFELD. That is a great question. Thank you for it.

So I think, as Ms. Harper and Ms. Virk so aptly summarized, right now the law as it is currently applied actively encourages law-breaking on the part of employers. So we know from other data that between a quarter to a third of all unionization drives include the unlawful firing or otherwise disciplining of union supporters and union organizers.

And you combine that with all the lawful ways in which existing law is tilted in employers' favor, and you have this present situation, where millions of American workers cannot exercise their legally guaranteed right to organize. And that is why I think updat-

ing the National Labor Relations Act for the present realities of today's workplaces is so important.

Chairwoman WILSON. Thank you.

Ms. Virk, we can all agree that when an employer breaks the law, they should be accountable for their actions. But the National Labor Relations Board has very limited power to enforce the workers' rights it is charged with protecting.

In your experience, what have you found to be lacking in the NLRB's current enforcement powers? And what can Congress do to deter companies from engaging in illegal behavior?

Ms. VIRK. Well, I think in the written submission that I made to the committee there is a quote from a Supreme Court case nearly 50 years old now called H.K. Porter, which says and acknowledges the limited remedial powers that were granted to the National Labor Relations Board upon the founding of that board and the passage of the act in 1935. What the H.K. Porter Supreme Court said was that if we want that to change, Congress needs to act. That is not something that the judiciary can do. That is not something that the board itself can do by regulation.

Just to illustrate—and I provided a few illustrations in my oral testimony—a substantial number of violations of the act by employers are remedied solely with a notice posting.

That is, literally, if an employer fails to bargain in good faith, like the court in the case that I described found the employer in that case had done, the entirety of that remedy in that case was for the employer to be ordered to go back to the table and bargain with the union.

That is it. Literally a posting in the workplace saying: We will not refuse to bargain in good faith. In other words, go forth and just don't do it again.

That is not an effective consequence for breaking of the law, and it tells an employer, and it tells, more importantly, the workers who are attempting to organize, that the rights that they have been deprived of by the employer's violation are not important. Because if there is not a consequence attached to that violation, there can be no change in behavior that we can reasonably expect.

That is just simply one example. In terms of other remedial deficiencies in the act, those are documented both in my submission and elsewhere.

The lengthy delays between the time a person gets fired illegally during an organizing campaign and the time that even if they prevail they are reinstated, that can be years. And by that time, the organizing drive that they were aiding itself is either broken or has been substantially diminished.

So the employer in that case has accomplished the purpose that it set out to do when it acted with animus in firing somebody, and that is, to prevent and scare the union—scare the employees from joining a union and voting to have an effective voice on the job. That damage has been done, and it cannot be remedied years later by a reinstatement order.

Those are just a few examples.

Chairwoman WILSON. Thank you. Thank you so much.

I now recognize our esteemed ranking member, Ranking Member Walberg, for his round of questions.

Mr. WALBERG. Thank you, Madam Chairwoman.

And thank you for the panel for being here.

And, Ms. Harper, I may make further statements in closing, but your story, as told, evidences the reason why there needs to be choice, there needs to be opportunity, and it has to be free and fair, and that laws that are in place, regardless of whether amendments are needed—and we certainly would recognize that over time there are—have to be followed. And your case illustrates it very clearly. And I say thank you for sharing it.

Mr. Taubman, thank you for being here. The Department of Labor has prosecuted union bosses for embezzling well over \$100 million in workers' union dues since 2001, including most recently, sadly, in my home State, with the United Auto Workers Union scandal that was wide and far-reaching, and sad to see the impact that it has had on union workers. Clearly, we can't take for granted that union leaders always act with honesty and integrity toward their union rank and file.

The Labor Management Reporting and Disclosure Act is intended to allow workers to see how their dues are being spent by union bosses. Unfortunately, the Obama Administration rescinded rules that would have improved union financial transparency under LMRDA. I believe that Congress should codify those improvements into law.

Based on your experience, why do you believe it is so important for workers to have this financial information available to them about their union?

Mr. TAUBMAN. Thank you, Congressman Walberg.

One of the reasons for the decline of workers choosing unions is the prevalence of these kind of financial transgressions that we see day after day, as you have said. The Department of Labor, you can just go to their website and see a constant stream of abuse of workers, abuse of the money that workers are forced to pay, because basically absolute power corrupts absolutely. So it is very important to strengthen the LMRDA reporting requirements.

Employees come to me on a daily basis and ask me about how unions are spending their money, and when we go and look at the LM-2s, the main financial disclosure reports that the unions are required to file, they are very, very cursory. They don't provide any details. It is impossible for someone to look at these disclosure documents and see what the union is actually doing with their money. So all of this creates a culture of no accountability.

I would also add, the National Labor Relations Board just ruled in a case of mine called Kent Hospital, Jeanette Geary. It is referred to in my written statement. And in that case, the union refused to give these employees a copy of its audit. It took a 10-year legal battle for these employees to get a copy of the union's audit, which they still haven't gotten, because the union hasn't yet complied with that decision.

So if you want to know the bottom line, employees need to know what the union is doing with their money, especially in situations where they are being forced to pay this money or face discharge.

Mr. WALBERG. I mean, it is a sad, sad display either way, where the employee doesn't have transparency or the employer isn't able to have the transparency as well to deal with.

Let me ask a final question here. The NLRA protects workers from being fired, disciplined, or otherwise harmed by their employer for seeking to unionize as the law intends, but no such rules exist to protect workers from union coercion and intimidation when trying to decertify their union. What other inequities exist between the union certification and decertification process?

Mr. TAUBMAN. Right. Well, as I said in my statement and in some of the written material as well, the labor law is slanted to get unions in power and keep them in power. It is very difficult for employees to mount a decertification campaign in the face of entrenched union power in the workplace.

Now, these employees have lived with the union, maybe they have lived with the union for decades, and then they say: You know what, we want a vote. All we want is a vote. People vote for all of the Congressmen in this room on a 2-year basis. So employees say: All we want is a vote.

And what happens is, suddenly there is a raft of what is called blocking charges that get filed, or suddenly there are NLRB doctrines, all kinds of bars—the successor bar, the voluntary recognition bar, the settlement bar—a whole raft of crust that has been placed on the National Labor Relations Act over these years that prevent employees from just getting a simple vote. And that is one of the major inequities, because none of these bars apply when a union is seeking a certification.

Mr. WALBERG. Thank you. I yield back my time.

Chairwoman WILSON. Thank you.

We will now go to the members for questions.

Ms. Wild.

Ms. WILD. Thank you, Madam Chairwoman.

Good morning.

I would like to start with Ms. Virk and ask you some questions about employers' standing. All right? When a union files for an election, the employer, as I understand it, is considered a party to the election and can litigate issues involving the scope and timing of the election. Is that correct?

Ms. VIRK. That is correct.

Ms. WILD. And is the employer on the ballot when employees vote on whether to have union representation?

Ms. VIRK. The employer is not on the ballot. It is either union or no union. Or if there is a contest between more than one union, both unions will be listed on the ballot.

But employers, certainly in my experience, have approached the process as if they were on the ballot and that a vote for no union is, in fact, a vote for the employer, and they attempt to try to convince employees through a variety of means, some of which are lawful and coercive, some of which are unlawful, to vote against having a union.

But that is correct, the employer is not technically on the ballot, but most employers, many of them, act as if they are.

Ms. WILD. So where is it in the NLRA that an employer is given the right to litigate an election when they are not on the ballot?

Ms. VIRK. Well, as I understand it, it is actually not in the text of the act itself. I believe it is Section 9 that identifies the process for choosing a representative and for workers to choose a represent-

ative, but it speaks in those terms, employees' choice of representative for the purposes of collective bargaining. There is no mention of the employer expressly having standing in that process in the text of the act.

Ms. WILD. And am I correct that employers lack standing when workers file for an election under the Railway Labor Act? Is that correct?

Ms. VIRK. I believe that is correct, yes.

Ms. WILD. And do you believe that employers have a due process right to have standing in such elections?

Ms. VIRK. I know that argument has been made. To be honest, I don't know whether any court or whether the board has considered that issue.

Ms. WILD. Do you believe they do?

Ms. VIRK. I don't think that they are granted that right by the text of the act. Whether there is a constitutional due process claim or not, I am sure they could argue that. I believe that they should not have it.

Ms. WILD. Thank you.

Ms. Harper, I would like to just ask you, you have indicated in your written testimony that you were active in trying to disseminate information about workers' right to unionize and so forth. Can you explain or describe for us what sort of actions were taken by your employer in response to efforts to unionize?

Ms. HARPER. Some of the actions were the mandatory meetings that we had that would tell us the negative things about a union. In just our department meetings, they would threaten that if we had a union, they could move their business elsewhere. People that were part of the union, like me, I was demoted and then placed out in front of everybody for them to see on a job that was a two-man job. So they did a lot of intimidation that way.

Ms. WILD. And do you believe that your coworkers understood that your demotion was related to your efforts to unionize?

Ms. HARPER. Yes, I do, because I had a lot of them that were afraid to even talk to me inside the plant. But they would meet me at gas stations outside the plant to talk about the issues they were having in their department, but they were afraid because they needed their jobs.

I also had a man that met me outside of there to tell me that management forced him to sign a statement against another employee that was on our VOC committee that, in turn, got fired behind that statement. And he was afraid, but he needed his job, because that was his livelihood.

Ms. WILD. And are you still in touch with your former co-employees?

Ms. HARPER. Yes.

Ms. WILD. And do you know anything about whether safety conditions at the plant have improved at all since you left?

Ms. HARPER. They have improved, but a lot still exists, and they tell me all the time they wish we had a union.

Ms. WILD. And you described an incident involving an employee who was actually killed on the job?

Ms. HARPER. Yes.

Ms. WILD. And that was back in March 2018?

Ms. HARPER. Yes.

Ms. WILD. And you learned of that from another employee, or how?

Ms. HARPER. No, it was news, it was public news.

Ms. WILD. Okay. I yield back. Thank you.

Chairwoman WILSON. Thank you.

Chairwoman WILSON. Dr. Roe.

Dr. ROE. Thank you, Madam Chair. I appreciate that. And thank everyone for being here.

Look, the most protective worker in the world is the United States worker, employee, no question about it. My dad was one of them, a union member, worked for B.F. Goodrich Company making heels for shoes. He did after World War II. He lost his job. It was outsourced to Mexico.

And, Dr. Rosenfeld, I appreciate your research, but I think it is a little more complicated. One worker in four in 1960 was in manufacturing. Today, less than 8 percent of Americans are.

In 2016, we lost 20,000 manufacturing jobs. And thank goodness, President Trump has tried to bring these back. We have added 600,000 manufacturing, good-paying jobs for American workers.

And I think that is one of the problems, where we lost wages. You mentioned that. I think that absolutely contributed to it. And seeing those jobs come back is a great thing.

Look, I remember I chaired this subcommittee for 6 years, and if I remember correctly, the average time to unionize is 35 days on average.

I dropped a bill yesterday called the Employee Rights Act, and I want to look after the employees. It requires a majority of all union members, not a simple majority of those who cast ballots, to unionize.

And this one is very near and dear to my heart because I put a uniform on, left this country over 40 years ago to protect the most sacrosanct right we have, and that is a secret ballot. Every single one of us up here was elected by a secret ballot.

If you want to unionize, you have an absolute right to do that. My dad was in the union. But you should have a secret ballot so you are not intimidated either, as Ms. Harper mentioned, either for or against. You can vote on it the way you want to.

It is a mandated opt-in permission for each union member to utilize his or her union dues for any other activity other than collective bargaining and direct all unionized workplaces to hold periodic secret ballot referendums to determine if employees wish to remain in their current union since the majority or most members never voted on it. A safeguard to worker privacy by granting individuals the ability to opt out of sharing their personal information if they don't want to. And I could go on. There is more to this.

But I would like to ask a question to Mr. Taubman. And this I found interesting. A 2015 poll from the Opinion Research Corporation found that 81 percent of Democrats support the right to a secret ballot election, support a requirement that unions stand for periodic recertification, and support a requirement that unions receive opt-in permission from workers before using their dues on politics.

Is this number surprising to you based on your experience representing employees around the country?

Mr. TAUBMAN. Not surprising to me at all, Congressman Roe, because—

Mr. ROE. Is your mic on?

Mr. TAUBMAN. Okay. Sorry.

These things represent fundamental American values. Secret ballot, not being forced to give money to organizations that you disagree with, having financial transparency with organizations that you are asked to support, all of these things are fundamental free speech, free association values.

The Supreme Court in the Janus case just last term and in a series of cases going back many decades has recognized employees have the right to join unions and support unions, but also must have the equal right to not join, to refrain, to disassociate.

And that is what we are talking about here. The right to join must include an equal right to refrain, because without that, then we are in Venezuela, let us say.

Mr. ROE. Americans vote for their representation here, as you mentioned, every 2 years, and they are guaranteed access to a secret ballot when doing so. In this way, Americans can hold their congressional members accountable.

In your opinion, would the secret ballot and periodic elections bring more accountability to unionized workplaces?

Mr. TAUBMAN. Absolutely, because union officials will have to work to get the support of the employees they represent. Right now, if the employees have never voted, it is almost impossible for them to even get an election to determine whether the union has support or not. So the union officials have no real need to be accountable to the people they represent. But if there was automatic recertifications, they would have to work for that support.

Mr. ROE. And I think, you know, I kind of laugh about this, saying this tongue in cheek a little bit, but my wife claim she votes for me during these elections, but I don't know for sure because it is a secret ballot. That way I can't intimidate her at the house to vote for me.

I feel that strongly about it. I think of anything we do, we should guarantee every American the right to vote unintimidated and with a secret ballot.

Madam Chair, thank you very much. I yield back.

Chairwoman WILSON. Thank you, Dr. Roe.

Now I recognize Representative Fudge.

Ms. FUDGE. Thank you very much, Madam Chair.

And thank you all so much for being here.

Ms. Harper from Ohio, welcome.

Ms. Harper, there really is nothing that we can do to change the hearts and minds of the lowlifes who treated you the way they did, there are just some people who are despicable and mean, especially when you were just only trying to exercise your First Amendment rights, which people think only belong to certain types of people. But you have the same right to First Amendment speech as anybody else.

The only problem I see today with labor laws is the people who want to destroy them, those who have become more desperate and



more aggressive in their effort to destroy people who work hard every day like you do. These are people who have probably never worked by the sweat of their brow or the bend of their back, so they have no idea what it means to protect workers. So the real problem with labor laws today is those who want to destroy them.

And it is interesting that we talked about misappropriation of funds. It is not confined to unions. We have had some people in the President's Cabinet who had to leave because of questionable use of taxpayer money. So it is not confined to unions. People are put in jail every day, corporations who misappropriate funds. It is not confined to unions. So I don't know what that was all about, but it just absolutely made no sense.

Mr. Rosenfeld, we talk about right-to-work laws. Can you tell me if, in fact, right-to-work laws really were designed to keep unions out because they didn't want Blacks and Whites to have the same equal rights?

Mr. ROSENFELD. Thank you for that question, Congresswoman.

So the history of right to work is interesting. It is pretty ugly. One of the key drivers behind these types of regulations was a Texas businessman, a successful businessman and White supremacist, Vance Muse, who promoted the rule because he ardently felt that unions brought people together, brought workers together across racial lines, and that was something he felt needed to be stopped in its tracks.

And so it was no accident that the first states that adopted these types of regulations happened to be the states of the former Confederacy.

Subsequent to that, since then, they have spread. Missouri, my home state, was the last state in which the legislature passed right-to-work legislation. But just back in the summer of 2018, two-thirds of Missourians voted against it, and that was pretty astonishing from, I think, the broader perspective of those who kind of fight for and fight against these types of regulations, because like many States, Missouri has seen dramatic declines in union representation.

Ms. FUDGE. Mr. Rosenfeld, let me cut you off. I have got a very short period of time. Your answer was yes, though, am I right, that they—

Mr. ROSENFELD. Right.

Ms. FUDGE. Okay. Thank you.

So are you surprised that today, with all of the heightened hate speech and all of the rhetoric we hear every day, that we are starting to see attacks on labor unions again?

Mr. ROSENFELD. No. But this has been a longstanding concern from many powerful interests, conservative business interests, to destroy organized labor in America. For the last 30 or 40 years, they have proven quite successful.

Ms. FUDGE. So right to work really was born out of racism.

Ms. Virk, can you talk just briefly about how the Supreme Court has undermined organizing and rights of immigrants?

Ms. VIRK. I think you're probably the seminal case on that, Congressperson Fudge, is the Hoffman Plastics case that was decided, I believe, in the early 2000's. And what that case held was that even if an employer fired a worker for union activity, that if

that worker was an undocumented immigrant, that worker not only had no right to reinstatement but had no right even to back pay.

And let me just pause here. The way that the board calculates back pay is that they take the wages that the employer paid and then they subtract any wages that the employee earned in the interim period. So the employer essentially gets the benefit of employees going out and seeking work to keep body and soul together while they have been unlawfully discharged from the employer.

And what that Supreme Court ruling, I think, has really done is discourage even further undocumented immigrants from organizing and has encouraged employers to use immigration status as a weapon during organizing campaigns. And I can go into further detail.

Ms. FUDGE. Well, my time is running out. I would just say that we find ourselves in a position that in this country, the more things change, the more they stay the same.

Thank you very much, Madam Chair. I yield back.

Chairwoman WILSON. I now recognize the esteemed ranking member of the Education and Labor Committee, Dr. Foxx.

Ms. FOXX. Thank you, Madam Chair.

Mr. Taubman, one of the primary purposes of the National Labor Relations Act, NLRA, is to protect the rights of employees, but it appears much of the law as written assumes that workers benefit from everything a union does and that every worker agrees with the decisions of the union.

Would you agree with that characterization of the NLRA? And from your experience, is this view accurate?

Mr. TAUBMAN. Sorry, sorry thank you, Congresswoman.

That is a fantastic question because workers are not monolithic and workers are not widgets. Workers are individual human beings who bring their own experiences and their own talents to the workplace.

And in answer to your question, if unions do such great work and all workers benefit, you would think that all workers would want to join. But, in fact, that is not the case, because workers see that the benefit is not necessarily true to them.

If you are a top shelf worker with specific skills, you may find yourself being held back by the union contract. If you are a young worker who wants more pay and is not that concerned about your pension, you may find your economic priorities are turned upside down by a union contract and union representation. And those are just a few examples.

So the bottom line is that individual workers should be treated as individuals, free to make their own decisions about what organizations they join or support.

Ms. FOXX. Thank you.

Mr. Taubman, 43 percent of union households voted Republican for president in 2016 despite roughly 90 percent of union political donations going to support Democrats.

What protections exist for workers to ensure they aren't forced to fund union politics against their will? And how might we amend the NLRA to provide stronger free speech protections to workers?

Mr. TAUBMAN. Well, of course, in right-to-work States employees have the free choice to not join and to opt out. That is how they exercise their right to protect themselves from funding causes and candidates they do not support.

In forced unionism States, employees are forced to pay as a condition of employment. And up until just a few weeks ago, the National Labor Relations Board had ruled that employees must fund union lobbying campaigns as a condition of employment.

That was a ruling from the Obama National Labor Relations Board in 2012. And only just now have we gotten a reversal of that in a case called *Kent Hospital*, where the National Labor Relations Board said employees do not have to fund political campaigns. But yet, it took a nurse, Jeanette Geary, a 9-year legal battle to get that ruling.

So the protections for workers who don't want to support political and ideological causes they oppose needs to be strengthened greatly.

Ms. FOXX. Thank you for that.

It has been mentioned more than once here that 90 percent of workers represented by a union today have never actually voted for that union itself to represent them, so we have created a system of inherited rather than elected representation.

Why is this the case? And how might Congress amend the NLRA to remedy this problem?

Mr. TAUBMAN. I mean, this could be done easily by passing legislation to have automatic periodic recertification. That is all that would be needed.

All of the elected officials in this room face the voters every 2 years. Senators face the voters every 6 years. I would leave it up to this committee and to Congress to determine what the appropriate interval should be, but it seems only fair that workers be asked periodically: Do you continue to support the union that represents you?

Ms. FOXX. Thank you.

And, Mr. Taubman, the last time Democrats held the House majority they voted to deny workers the right to a secret ballot for union elections, a protection guaranteed to every American when they vote for their elected officials, including Members of Congress.

Can you briefly explain the difference between the current card check process, secret ballot voting, and the card check scheme previously passed by the Democrats? Why is the right to a secret ballot so important in union elections?

Mr. TAUBMAN. My experience representing workers, and I am told this by many, is that when there is a card check campaign going on, they are coerced, they are harassed. Union officials come to their home. They are bribed. We will take you out for dinners. We will do whatever it takes to get you to sign a card, which counts as a vote, whatever it takes. That is part of the union organizer's manual, get that signature, whatever it takes.

But that is not how a secret ballot election works. That is not how free elections work. You walk into a booth, you close the curtain, you vote. Why unions are so afraid of a secret ballot election is just startling to me.

Ms. FOXX. Thank you for your indulgence, Madam Chairman.

I thank all of our witnesses for being here today.

Chairwoman WILSON. Thank you, Dr. Foxx.

Mr. Levin.

Mr. LEVIN. Thank you so much, Madam Chairwoman.

Mr. Taubman, you are getting good at turning on your mike.

So I hear—I see that you don't like it when—you consider it harassment when unions go to people's home. So are you in favor of giving workers access, mandatory access to union organizers in the workplace so that they can have that access to the information, yes or no?

Mr. TAUBMAN. Well, I believe that unions running organizing campaigns have access to workers.

Mr. LEVIN. You are wrong. I was a union organizer for years. Every employer that I tried to organize the workers at would arrest me if I came on the premises.

Mr. Taubman, I am also really interested in your devotion to regular elections. Do you favor that all workers in the United States should have an opportunity every 2 years to vote on whether they wish to be represented by a union or not?

Mr. TAUBMAN. No, because there should be—

Mr. LEVIN. Why not?

Mr. TAUBMAN. Because there should be a showing of interest by the workers.

Mr. LEVIN. So you only favor mandatory elections for workers who choose to join a union or who have a union, but you are against elections for all workers?

Mr. TAUBMAN. Well, I gather from your question you are suggesting that workers be assigned a union.

Mr. LEVIN. No, no, just whether they could—every 2 years they could have an opportunity whether they wish to be represented by a union or not.

Mr. TAUBMAN. Which union?

Mr. LEVIN. Whatever union they want.

Mr. TAUBMAN. Well, whatever union they want, but how would that work? They are going to be told, well, you are a truck driver, so we are going to assign you to the Teamsters.

Mr. LEVIN. No. No one talked about assigning. You mentioned that.

So you are against—you are for mandatory elections every 2 years for workers who have a union, but you are against it for workers who don't have a union.

Mr. TAUBMAN. If the union can organize and file for an election, which they seem to have every right to do, they only need 30 percent of the cards under current law, then they can file for an election.

Mr. LEVIN. All right. Thank you. Thank you.

Mr. Rosenfeld, you talked about the spillover effect when workers join unions in terms of how it affects nonunion workers. Can you explain more about what the spillover effect is?

Mr. ROSENFELD. Sure. So spillover effects occur through a variety of channels. I will be as brief as possible.

Mr. LEVIN. Yes. It is okay.

Mr. ROSENFELD. There are well-documented union threat effects. So if you are a nonunion plant next to an organized plant, you

might raise your pay and benefits to match the unionized plant's pay and benefits to avoid a unionization drive. So that has been going back generations of research documenting that.

But also we know from how pay setting occurs that industry leaders oftentimes set pay standards for the rest of the industry. And when organized labor was strong, many industry leaders were unionized. And so that means that union and nonunion plants alike looked to them when it came to setting wages and benefits.

Mr. LEVIN. So I think in 1947 and 1952, 35 percent of workers in the private sector were unionized. Today it is 6 percent. Sixty-two percent of Americans have a positive impact of unions. If we had a free market for union organization, we might have about 30 percent, according to Richard Freeman's research and others.

What impact might it have on the United States economy and especially on often marginalized workers—women, workers of color, immigrant workers—if there was a real free market for unionization and we got back up to something like 30 percent of workers being unionized?

Mr. ROSENFELD. That is a great question.

I think, first and foremost, you would see—for decades, post-World War II decades, we had productivity in the broader economy tracking average workers' wages.

Mr. LEVIN. Almost exactly, yes.

Mr. ROSENFELD. Exactly. And then there was a great divergence. And for a while, that kind of flummoxed economists and others who study this issue. I think there is growing consensus that one of the key reasons has been the dramatic loss of worker power.

So if we were to bring density rates up, 20 percent, 30 percent, I think you would see that gap start to close again, and your average workers, including racial and ethnic minorities, would start to benefit from broader growth in the economy.

Mr. LEVIN. And so you think it would have—do you think it might have any significant impact on the problem of income and wealth inequality in our country, which has gotten much worse in the same period as union density has declined?

Mr. ROSENFELD. I think if you look in this country's own history, you look across the developed world today, there is no question that raising density rates is a key factor in terms of reducing the types of disparities you are discussing.

Mr. LEVIN. Okay. Thank you.

Ms. Virk, can you talk about some of the ways that employers can stall elections?

Ms. VIRK. Can stall elections?

Mr. LEVIN. Stall elections, yes.

Ms. VIRK. Yes. Under the current rules that have been adopted by the board several years ago it is somewhat more difficult. But the main way that they can continue to do it is by contesting the composition of what they call the bargaining unit, which is the group of workers who is entitled to vote for union representation.

And employers often do this by adding groups of employees who may bear only an attenuated relationship to the group of employees who wants to unionize and who the union has been working with, and employers attempt to add those additional groups into the

group that will have the ability to vote on unionization in the workplace.

Mr. LEVIN. And the 2014 rules somewhat mitigated the problem. How did they do that?

Ms. VIRK. They somewhat mitigated the problem by adopting a set of presumptions that if the number of employees who were to be added to the unit were less than a certain amount, then the board would simply go forward to an election.

But it still is a substantial issue partly because the board doctrine since the Trump administration appointees have a majority has also decided some cases that make this additional adding in of additional groups into the bargaining unit by employers a much more routine practice. That case is called PCC Structural, I believe.

Mr. LEVIN. Okay. My time has expired.

Thank you, Madam Chair.

Chairwoman WILSON. Thank you.

Mr. Allen.

Mr. ALLEN. Thank you very much, Madam Chair.

My home State of Georgia has been named as the best State to do business in the last 6 years. We have been a right-to-work State since 1947. The economy in Georgia, particularly in my district, is thriving.

And, of course, I was at a function just on Friday where we had 7,000 national association of building and trades union members working at a nuclear power facility, the only one under construction in the country, and we had the president of the union there, the Secretary of Energy, the Secretary of Agriculture, the Governor.

And we were all thanking the President for helping us get to this point as far as the economy and helping us. America can now do big things again. It has been an amazing turnaround, by the way, as far as production at that facility.

And so I asked: How did you turn this thing around? And they said: We empowered the workers.

And so what we have seen in business, I was in business for 35 years, and this business of this top down, you do this, you do that, or you are going to be this, you are going to be that without freedom is out of style in this country. It is out of style in the workplace. In other words, you have got union, nonunion, this, that, or the other. I mean, what I am in favor of is empowering the worker.

Ms. Harper, you shouldn't work for a company, I mean, with 7.5 million jobs open out there, there are companies that would love to have your services and would treat you as you should be treated. Every worker should be treated well.

But the bottom line is Georgia is doing something right. And, obviously, the No. 1 reason that a business locates anywhere, anywhere in the country, is skilled work force.

In fact, I told the president of the national Teamsters building and trades union, I said, you skill up a work force and I guarantee, because in construction, we are all getting great at it. We don't have a lot of young people coming into our trades. So you train folks up and there will be plenty of jobs out there.

But according to the data, right-to-work States' household employment growth was more than double than that of forced union States. Again, you have to be this, you have to be that. In Georgia, we can be whatever you need to be, okay?

Why might a right-to-work State be a more attractive State for entrepreneurs and workers alike? I mean, what does your research indicate there?

Yes, sir, Mr. Taubman.

Mr. TAUBMAN. Well, when you talked about this gathering of the building trades there in Georgia, the fact of the matter is unions can exist well and can thrive in right-to-work States because they have a work force that has voluntarily joined, that sees benefit in it. In fact, there is a lot of union organizing going on in right-to-work States.

So there is just a recognition that employees have free choice and employees can thrive in right-to-work States. And that is all that we are asking for, is the free choice so that people can thrive in their workplace and their jobs and not be forced into a private organization. And when you have that, unions, if they represent people, have to be more responsive.

Mr. ALLEN. Again, which makes it a better fit for businesses that are looking for a location. Particularly, of course, foreign investment has grown substantially in Georgia because of that.

The thing we have in this country that I hold so dear is the freedom, the freedom to choose your job, your profession, the skill, and that sort of thing. And of course, nobody is in a caste system. You are not stuck.

I mean, what is it that we can do to bring both sides together and say this is the best solution for both—all workers?

Mr. Taubman?

Mr. TAUBMAN. Well, to me, it is obvious that right-to-work is just a free principle, that people get to choose and that workers thrive. I mean, how you convince a union that exists on coercion and compulsion to try something different, I don't know and I can't answer. The fact of the matter is unions exist and exist well in right-to-work States if they provide benefits that their membership chooses to join.

Mr. ALLEN. They are doing great in Georgia.

Chairwoman WILSON. Thank you.

I will recognize Mr. Norcross.

Mr. NORCROSS. Thank you, Madam Chairwoman. Thank you for holding this hearing, something near and dear to my heart and worked in close to 40 years dealing with labor board, labor issues back in the New Jersey/Philadelphia region.

About 30 years ago, the Ninth Circuit Court of Appeals held that it was irrational for the board to presume that a union was making an illegal threat unless the union proclaims that its picketing would be conducted in a lawful manner.

In spite of this, in a recent case involving the IBEW, the Republican-controlled board ruled that a union, the IBEW in this case, breaks the law if it merely notifies Company B that it might be picketing against A.

It sounds very confusing until you have actually lived this life, which I have been involved in. This ruling was so off base that it

led three Republicans appointees on the D.C. Circuit to rule that the NLRB approach to this issue was without foundation in the act relevant to this case and the general legal principles.

So what did the board do? It doubled down and issued another opinion, defying the D.C. Circuit.

All the local union did in this case was provide a courtesy copy to the Las Vegas Convention Center and Visitors Authority that the building and the construction trades councils was requesting the authority to engage in area standards picketing, something I was involved in literally for decades. Nothing here leads us to believe what the NLRB is making its decision.

So, Ms. Virk, where do you see this going, such defiance of the court, not the committee itself, but the court? Where do we go next, not follow any precedent, any law?

Ms. VIRK. Well, if I understand it, the labor board, I don't know if it is unique among agencies, but it is certainly the agency that I am familiar with, that—it has a policy of what they call non-acquiescence, which, as I understand it, it means that in any given case, if a court of appeals reverses a board order, the board is compelled to follow the court in that particular case, but it does not or it is privileged not to follow that same rule that the court has set down in any other similar case.

This is just one of the ways in which the board's jurisprudence ends up being conflicting and confusing and often internally contradictory. You know, is there a cure for it or is there an end in sight? I am not sure. But I do know—

Mr. NORCROSS. I think there is a cure, and it is something that we can do.

But this is the point. Precedent, the rule of law, the very basis for our country, and yet three individuals decide that they are now the law and will change it in any way they see fit.

This is a primary area of focus that I think we as a committee should look at when we start making recommendations and writing some of the changes that are really needed.

We thank you very much for your input in this, and it is something that this is just one of many issues that has been abused.

With that, I yield back the balance of my time.

Chairwoman WILSON. Thank you, Mr. Norcross.

Congressman Banks is recognized.

Mr. BANKS. Thank you, Madam Chairwoman.

Mr. Taubman, in 2014 the National Labor Relations Board instituted what has become known as the ambush election rule, which you mention in your testimony. Can you explain to the members of this committee what that rule is and how it infringes upon workers' rights?

Mr. TAUBMAN. Well, the ambush election rules allow that once a union files a petition that the election will be held very, very quickly—meaning there is no time for debate among the work force, there is no time for employees to educate themselves. And for employers who have Section 8(c) free speech rights, there is no time for them to have input into it.

You know, I heard some testimony about employers not being parties to these things. There is actually three parties to an NLRB election. There is the unions, there is employers, and there is work-



ers. And all of these people should have free speech rights in the workplace. And so the ambush election rules curtailed all of that and made it impossible for there to be a real debate.

And at the same time, it didn't apply, the ambush rules did not apply to a decertification. So if an employee said we want to choose to vote to get rid of the current union, suddenly it was all subject to being blocked and delayed, because those—

Mr. BANKS. Can I stop you there and ask you, what is the current status of the rule?

Mr. TAUBMAN. The current status of the rule is that the current NLRB is in the process of a rulemaking program looking at changing some or all of that rule. But it is just—these things take a long time when you deal with rulemaking, because there has to be notice and comment, the board, when they issue the final rules, has to respond to all of these comments. So you are looking at a process that often goes years.

Mr. BANKS. Okay.

Moving on to a different issue, a 2015 poll from the Opinion Research Corporation found that 81 percent of Democrats support the right to a secret ballot election. They support a requirement that unions stand for periodic recertification and support a requirement that unions receive opt-in permission from workers before using their dues on politics.

Is this number surprising to you, based on your experience representing employees across the country?

Mr. TAUBMAN. Again, these are all basic free speech, free association principles. I think if you ask Americans what do they think about secret ballots and free speech, which, frankly, is under attack in many parts of this country, most Americans support free speech and the right of people to organize together, but the equal right to not join, to not organize, to refrain. You can't have the right of association without having the right of nonassociation. The Supreme Court has held this for years.

Mr. BANKS. So it doesn't sound like you are surprised.

Let's move on to another issue. As a co-author of Indiana's very successful right-to-work law, I have noticed that a lot of opposition to right-to-work laws comes from the belief that reduced union power will lead to lower wages.

There are a number of studies that make this claim, but these studies often fail to account for the significant difference in cost of living across the States.

In fact, the Missouri Economic Research Information Center notes that right-to-work States have a cost of living that is 6.5 percent below the national average as of 2016.

When taking this difference fully into account, disposable per capita income was \$2,400 higher in right-to-work States than forced union States, according to 2016 data from the Bureau of Economic Research.

Can you talk about why income may be higher in right-to-work States when the common wisdom suggests that it would be lower?

Mr. TAUBMAN. So I am not an economist. Talking about the statistics is not my forte. I am a lawyer that represents individual employees.

But to me, it is just common sense that when you have a work force that has free choice, that is mobile, that their talents are rewarded based upon who they are as an individual and not treating workers as widgets or machines that get put into collective bargaining units that you are going to have more freedom and you are going to have more economic growth. And that is why right-to-work States lead the country in economic growth.

Mr. BANKS. Thank you. My time has expired.

Chairwoman WILSON. Thank you.

Congressman COURTNEY.

Mr. COURTNEY. Thank you, Madam Chairwoman, and definitely for holding this hearing this morning.

Mr. Rosenfeld, I would like to expand on some of your comments regarding the role that unions play in reducing inequality and ensuring that wages rise with worker productivity and maybe in a little different sort of realm than might have been discussed this morning, which is right now I think almost any Member going anywhere in the country is going to hear a hue and cry about the skills gap and the need for getting work force training and just a way of imparting, whether it is manufacturing, healthcare, finance. I mean, the list goes on and on.

In Connecticut, where we do have a work force with 16 percent union participation, we have actually seen some really impressive efforts between management and unions, particularly in the area of defense manufacturing, again, as we see baby boomers leaving in big numbers from the work force and, obviously, trying to get millennials sort of up to speed.

The apprenticeship program which has been going on down at the Electric Boat shipyard, which is now about 12,000 strong in terms of the work force and it is going to continue growing over the next 2 or 3 years with the Navy shipbuilding plan, that, again, has been incredibly successful in terms of really accelerating people through the skills acquisition process, if you want to call it that. They also continue with active learning centers for people who are actually in the yard. So that, again, this is just an ongoing process. And, again, it is done through a management-labor sort of agreement in terms of how it operates.

We also up in Pomfret, Connecticut, have the Laborers' International Union of North America, which actually has their New England training academy for the building trades and construction.

So, again, I just wonder if you could talk a little bit, if you could, about sort of the ancillary benefits of collective bargaining in terms of really addressing issues that are common to both management and labor.

Mr. ROSENFELD. Yes, I think that is a great question. And the unions' role in kind of fostering training, work force development programs oftentimes gets overshadowed in these highly politicized debates. But it is real, it is there, and we see successful efforts across the country.

In Connecticut there has been good research done on manufacturing, in Wisconsin, in Michigan as well, where they have had kind of successful training programs working hand in hand with management about how to upskill the work force.

And I think that is a nice way of saying that not only do unions help close the gap between rising productivity and average worker wages, but they also help bump productivity in the first place. And that is, I will say, an area that gets less attention, but probably needs more.

Mr. COURTNEY. Thank you. Again, I think that having that sort of bottom-up communication about ways that new technologies are being introduced in terms of just workplace methods and production, again, has just been very successful in terms of—you know, they just commissioned the USS

South Dakota. Again, built ahead of schedule. The work force is now 51 percent millennial. And if you go back just 3 or 4 years ago, it was about a quarter.

So this thing is happening very quickly in terms of just the change in the work force. And there is just no question that the union-management arrangements to really kind of mentor these young folks coming in through the metal trades council and the United Auto Workers has just really been a tremendous success.

Mr. ROSENFELD. Yes, I wouldn't disagree at all. And we see that kind of overseas in places that still retain strong manufacturing bases, Germany, Denmark, and the like. That unions, one of their key roles is helping in this kind of upskilling and bringing in kind of new workers to replace those who are now facing retirement age.

Mr. COURTNEY. Thank you. I would be remiss if I didn't mention that Mr. Scott's district is also seeing that same kind of change that is happening in the work force. And this really is the question of the day for our economy, is just whether we are going to have the folks skilled up to take on these opportunities.

With that, I yield back.

Chairwoman WILSON. Thank you.

I now recognize the esteemed chair of the Education and Labor Committee, Chairman Scott.

Mr. SCOTT. Thank you. Thank you, Madam Chair.

Mr. Rosenfeld, we have heard a suggestion that unions hold people back. Can you show the difference between compensation of union members and nonunion members? Does it make a difference?

Mr. ROSENFELD. Sure. The union wage premium, well documented and now decades worth of studies, averages about 15 to 20 percent. So that means you take a worker who belongs to a labor union and an otherwise similar nonworker, similar in all sorts of characteristics that affect people's pay, the union member earns on average 15 to 20 percent more than the nonmember.

Mr. SCOTT. Likelihood of a pension or employer-provided healthcare?

Mr. ROSENFELD. Absolutely. So once you start factoring in benefits, the divergence grows. The likelihood of having employer-provided healthcare is much higher among the union members. And certainly having a pension, much higher among union members. And certainly having a defined benefit pension, much higher among the union members.

Mr. SCOTT. Thank you.

Ms. Virk, can you tell us why a private right of action is important?

Ms. VIRK. A private right of action to enforce the National Labor Relations Act's protections?

Mr. SCOTT. Right.

Ms. VIRK. Right now, I believe that the only private right of action that exists for enforcing any of the protections under the act is an action to enforce the duty of fair representation, which is an action that an individual member can bring against a union.

There are, to my knowledge, no other provisions of the act, including the right to be free from illegal coercion, the right not to be fired for engaging in union activity, the right to bargain collectively. All of those rights are only enforceable and exclusively enforceable through the board's own processes.

Certainly, we have seen that in other situations having a private right of action does develop a body of law and provides certain remedial measures that might not be available under an agency statute. I am, obviously, not here as a policymaker, but it is something that certainly this body could consider as an effective way to provide a remedy.

Mr. SCOTT. Could you say a word about whether or not it is important to have injunctive relief and potential reinstatement during litigation?

Ms. VIRK. Really, nothing could be more critical than having quick relief for when an individual, such as Ms. Harper, is fired for union activity. This often happens, it happens in not just isolated instances, but in a substantial percentage of campaigns to organize. Individuals who take the lead and who come out to their employers, as it were, as union supporters end up being suspended, fired, and targeted.

And it is not just that worker who is hurt. It is all the other workers who wish to have a union who see that happen and are reminded once again of the complete and utter coercive authority of their employer, what their employer can do to them. And having an injunctive relief that was not just available but mandatory in those cases would be a critical step.

Mr. SCOTT. Can you say a word about the deterrent effect of civil penalties and whether the civil penalties are sufficient today?

Ms. VIRK. Well, as I understand it, there really are no civil penalties under the National Labor Relations Act. As I said, many of the wrongs that are found by the board are cured or supposedly cured only by a notice posting, literally a piece of paper up in the shop saying go forth and don't do it again. This is really not a meaningful remedy.

Almost every other statute that I can think of in this subject area and many others has civil penalties attached to it for the basic reason that, again, we provide consequences for violating those rights that we believe to be important.

Mr. SCOTT. There is a concept of joint employer where you are at a temp agency and working at an agency, there is a question of which one you can negotiate with. Why is it important to be able to negotiate with whoever is actually controlling the conditions, the terms and conditions of employment?

Ms. VIRK. Well, because those are the entities, just to State the obvious, that have the ability to affect an employee's terms and conditions of employment. If an employee is going to have a mean-

ingful right to bargain collectively, they have to have the right entities across the table from them when they do that.

Mr. SCOTT. And why is it important to have a first contract? What happens on the first contract? Does that need to be changed?

Ms. VIRK. Right now when people organize, they choose a union, they jump through all of the hoops that are required of them. There is no incentive for an employer to reach a contract with the employees. In many cases what happens is employers stall that process, and in the end of the day, even though workers have voted overwhelmingly to unionize, they never get a contract.

I would suggest that one of the remedial measures that this body could take into account would be to have some process by which, if a contract is not reached after a certain period of bargaining has expired, that there be a neutral process by which an initial contract could be reached between the parties or facilitated through mediation or arbitration.

Mr. SCOTT. Thank you.

Thank you, Madam Chair.

Chairwoman WILSON. Thank you.

Before recognizing the ranking member for his closing statement, I ask unanimous consent to enter the following materials into the record: a letter from the International Union of Painters and Allied Trades.

Without objection.

[The information referred to follows:]

IUPAT

**Memo****To:** Chris Sloan**From:** Britton**cc:****Date:** March 25, 2019**Re:** House Ed and Labor HELP Subcommittee Hearing Testimony this week

I have prepared a written testimony for a House hearing this week. The House Education and Labor Subcommittee Health, Education, Labor and Pensions will host a hearing on the right to organize. I was asked to put this testimony together Wednesday March 20<sup>th</sup>. Because of this I have only had the time to consult GAD Sloan.

I think this House Ed and Labor HELP hearing is relative to our work organizing the private sector. The right to organize and give voice to worker concerns has been restricted. Dems will later introduce a bill with many benefits for labor organizers. This hearing is part of the roll out of that legislation.

I am writing to ask for your approval for this testimony to be submitted to committee staff.

I have asked that the Chair of the House Ed and Labor HELP Subcommittee Rep. Frederica Wilson (FL-24-D) add our testimony to the record of the meeting.

**March 26<sup>th</sup>**

- Hearing on "Protecting Workers' Right to Organize: The Need for Labor Law Reform."

Subcommittee on Health, Employment, Labor, and Pensions (House Committee Education and Labor)

Tuesday March 26<sup>th</sup> 2019, 10:15 a.m. 2175 Rayburn House Office Building.

*Witnesses:*

Mr. Jake Rosenfeld Ph.D. Associate Professor of Sociology, Washington University in St. Louis, St. Louis, MO

Ms. Cynthia Harper, Englewood, OH

Mr. Glenn M. Taubman, Staff Attorney, National Right to Work Legal Defense Foundation, Springfield, VA

Ms. Devki K. Virk J.D., Member, Bredhoff & Kaiser, PLLC, Washington, D.C.  
Staff contact- Kyle Decant – kyle.decant@mail.house.gov

*Testimony presented by Chris Sloan, Director of Government Affairs for the International Union of Painters and Allied Trades.*

Hearing on "Protecting Workers' Right to Organize: The Need for Labor Law Reform."

Subcommittee on Health, Employment, Labor, and Pensions (House Committee Education and Labor)

Tuesday March 26<sup>th</sup> 2019, 10:15 a.m. 2175 Rayburn House Office Building.

Chairwoman Wilson and Ranking Member Walberg:

Thank you for the opportunity to share the views of the International Union of Painters and Allied Trades, which represents a growing community of over 100,000 active and retired craftspeople in the United States and Canada, and represents all workers in the Finishing Trades Industries.

Congress should begin at one considering legislation to improve the lives, working conditions and workplaces of millions of American workers.

The tilt heavily favors the wealthy over everyday folks and it shows in our employment law. Our workplaces must be run like democracies, not autocracies, with the employer having unilateral say in wages, benefits and workplace conditions. Workplaces work best and are most productive when there is collaboration, trust and respect between employees and employers.

Today, there is a serious and destructive imbalance at too many workplaces, with employees not able to speak up, speak out and exercise their right to discuss employment conditions, wages and benefits with an employer or co-worker.

Congress must act to ensure a check and balance system in the workplace.

When Congress fails to protect the right to organize and the right to negotiate a contract, we see the results: employers have all the power and workers have little to none causing working conditions to deteriorate, and wages to decrease.

Legislation should correct this imbalance by restoring workers' rights to organize and bargain for better wages, benefits and working conditions and give workers the opportunity to join the middle class. Unions' ability to bargain for a fair wage and working conditions has always been - and remains - one of the most effective tools Americans have to raise their standard of living.

Employees should have the right to organize through a fair process. Employers should accept the freedom of the majority of eligible workers to choose to bargain collectively. Employers should never be able to sit on the results of an organizing victory and refuse to negotiate a first contract.

We should eliminate 'right to work for less' laws that have allowed 28 states to pass legislation prohibiting unions to collect fair-share fees. And legislation should ban employers from compelling workers to attend meetings that are basically used to scare them into not expressing their freedom in the workplace.

In far too many union organizing campaigns in the private sector, the employer spends millions of dollars in union-busting efforts -- money that otherwise could be used to improve workers' wages and other improvements in the workplace.

In fact, anti-worker, anti-union, scare tactics have worked to reduce union membership and has accelerated income inequality. The middle class is getting squeezed as the gap between the rich and the average worker widens.

Unions are good for workers and our society. Union workers earn an average of 26 percent more than non-union workers, resulting in more tax revenue. They are more likely to have health insurance and a retirement plan. And importantly, union members can speak up about health and safety violations and wage theft without the fear of retaliation.

Today, we have an opportunity to reform labor policy that has been under attack by the forces allied with big business. The rich have gotten richer while the wages and rights of workers have been restricted.

There should be no barrier for workers to exercise their right to discuss employment conditions, wages and benefits. Yet anti-union policies have severely affected women, minorities and immigrants. For instance, according to a National Employment Law Project Study, women were significantly more likely



than men to experience minimum wage violations and foreign-born workers were nearly twice as likely as their U.S.-born counterparts to experience a minimum wage violation. With no voice, what are women to do?

Unless we ensure that all workers' rights are protected, workers will continue to be exploited and a race to the bottom will persist.

We need to protect the right of all American's to bargain for fair wages. Justice requires a balancing of the scales, which for now are heavily tilted in favor of corporations. It is time for all Americans who believe in fairness and income equality to support legislation guaranteeing their rights to organize and bargain for better wages, benefits and working conditions.

Chairwoman WILSON. I now recognize the distinguished ranking member, Mr. Walberg, for his closing statement.

Mr. WALBERG. I thank you, Madam Chairwoman, and appreciate the hearing. It is always worthwhile to discuss things that we may assume have been talked to death. Sometimes we forget that, and we don't get the reality. So thank you for this.

You have almost persuaded me to start an organizing petition for the minority. If we could get a union in place for the minority I think we could have—don't worry, I am not going to. You are still treating me fine.

I used to maybe drive my kids nuts, especially in their teenage years, when they would come and talk to my wife—well, first they would talk to me, then they would go to my wife because they could get a better answer there—about the dating process and what was going on and the romantic issues that were taking place in their life. And I would respond to them and say, well, that is the dance of the courtship.

And so it got to a point in time in their life where any time they approached me and I thought it was going to be the dance of the courtship. And they knew exactly what I was saying. It is not an easy dance. It takes two people. It takes some other factors. At times, it just doesn't seem to work out in every case exactly the way you want it at that point in time.

But somehow each and every one of them got through it, as their mother and father did as well, that dance of courtship.

And so there is maybe a dance of the workplace. I want to kind of apply that. There is a dance of the workplace. Nothing is perfect in a workplace. And sadly, as Ms. Harper so clearly illustrated for us today, there are still a few monster mashes going on as well in those workplaces that need to be taken care of, and that we have put in place rules and laws, agencies that are supposed to be taking care of that.

In some cases, they are. In some cases, we miss those things. And certainly we want to take those seriously and especially when it relates to the life of an individual in the workplace.

And Congress is responsible for defining and chaperoning this dance, as it were. It is our responsibility, the workplace miracle that has made America normally the greatest and most productive place to live and work in the entire world. I don't think there is a debate on that.

With our mistakes, we have remedied many of those. We have moved forward. And the unions and the management, employees and the owners, have been all part of that over the course of time.

And I don't want to give up on it, Madam Chairwoman, and so again, I appreciate this hearing. I believe that any effort that takes the employer-employee scale out of balance puts everything out of sync. That scale has to remain in balance to make it work, and that is our responsibility, along with the workplace as well.

Sadly, the results, if this imbalance takes place, can include abuse. It can include scandal. It can include fraud, lack of transparency, fear, and economic failure, both in individuals' household life as well as in the business' life as well if we are not careful.

We have come a long way to turn back now. While there are dark corners in most every room, there is irrefutable evidence that workers enjoy free choice better than not.

We just have to look at Michigan for that. We can do all of the studies we want and put all of the data that we can find to put in that some cases, sadly, makes a point that we want to make.

But when you look at the laboratory of life experience or the dance of the workplace at times in a State like Michigan that I am privileged to represent, free choice of free individuals, making informed decisions, and then having the regulations and rules in place that meet the need of the place and time we find ourselves works best. Michigan hasn't seen a decline in union membership and an actual increase in middle class pay through coercion.

Those are the facts in Michigan today, and I want to see them continue. So that means that we work together in a light touch approach as necessary. If there is a heavy touch that is absolutely required, that is one thing.

But to keep that scale so there is always that creative tension, and in most of the businesses I go into, there is that creative tension, where the employer knows that I am at this State right now because I have taken care of my employees. And all I need to do is let some of those lights go out and the air conditioning fan go out and a number of things take place and lockouts get left open and unrepaired and I have got a problem on my hands.

I think that is productive, and I want to be part of that. And I thank the panel for being here today to cause us to think through those issues. And I yield back.

Chairwoman WILSON. Thank you, Mr. Walberg, and we continue on our path together.

I will now recognize myself for the purpose of making my closing statement.

Thank you again to all of our witnesses for your testimonies today.

Today we heard how weak labor laws have failed to safeguard the human right to join a union. Routine violations of the right to organize suppress wages and deny workers the opportunity to negotiate for their fair share of the wealth they create.

We heard from Dr. Rosenfeld how the decline of union membership hurts all workers and how unions can close the wage gaps for women and people of color. We heard from Ms. Harper how difficult it is to organize a union in the face of employer resistance. Ms. Harper is one of many courageous Americans who stood up for their right to organize a union and was unfairly targeted.

As our witnesses have made clear, Congress must act now to stop violations of workers' rights and reverse decades of wage stagnation and income inequality.

I thank my colleagues for an informative hearing. I thank the witnesses for coming. And I yield back my time.

If there is no further business, without objection, the committee stands adjourned. Thank you for coming.

[Additional submission by Mrs. Foxx follows:]

**Rep. Virginia Foxx, Republican Leader, Committee on Education and Labor**  
**Submission for the Record**  
**Hearing: “Protecting Workers’ Right to Organize: The Need for Labor Law Reform”**  
**Subcommittee on Health, Employment, Labor, and Pensions**  
**March 26, 2019**

**Union decline has not made Americans poorer**

**The middle class is shrinking because more people are moving up the economic ladder, even as the unionization rate has declined.** According to analysis of U.S. Census Bureau data by Mark Perry at the American Enterprise Institute, the portion of high-earning households is growing while the portion of middle-income and poor households are both shrinking. In inflation-adjusted 2016 dollars, the percentage of U.S. households earning between \$35,000 and \$100,000 fell from 53.2 percent in 1967 to 42.1 percent in 2016. That is because the portion making less than \$35,000 fell from 38.7 percent to 30.2 percent, and the portion making more than \$100,000 per year rose from 8.1 percent to 27.7 percent from 1967 to 2016.<sup>1</sup> The union membership rate fell from 27.8 percent in 1967<sup>2</sup> to 10.7 percent in 2016.<sup>3</sup> Moreover, median household income reached its fifth-straight record-high in 2017, at \$61,372. In 2017 dollars, the typical American household earned over \$1,000 more *per month* in 2017 than it did in 1975.<sup>4</sup>

**The decline of unions has not entrenched a permanent upper class.** According to research from Washington University professor of social welfare Mark Rank and Cornell University Professor Thomas Hirschl, looking at 44 years of longitudinal data for individuals ages 25 to 60, 39 percent of Americans will spend at least one year in the top 5 percent of the income distribution, 56 percent will find themselves in the top 10 percent, and 73 percent of Americans will spend a year in the top 20 percent of the income distribution. Of the 12 percent of Americans who will experience a year in the top 1 percent of income, just 0.6 percent will do so in 10 consecutive years.<sup>5</sup>

**Income inequality remained stable in recent years even while the union rate declined.** The portion of total income earned by the top 5 percent and by the top 20 percent of U.S. households has remained almost constant over the last 25 years while the union rate fell from over 15 percent to 10.7 percent. The share of income earned by the top 20 percent stayed between 48.9 percent and 51.5 percent from 1993 to 2017, while income share of the top 5 percent stayed between 21 percent and 22.6 percent. The “Gini index” measuring income inequality on a scale

<sup>1</sup> MARK PERRY, AM. ENTERPRISE INST., YES, THE US MIDDLE CLASS IS SHRINKING, BUT IT’S BECAUSE AMERICANS ARE MOVING UP. AND NO, AMERICANS ARE NOT STRUGGLING TO AFFORD A HOME (Jan. 31, 2018).

<sup>2</sup> GERALD MAYER, CONG. RESEARCH SERV., UNION MEMBERSHIP TRENDS IN THE UNITED STATES (Aug. 31, 2004).

<sup>3</sup> BUREAU OF LABOR STATISTICS, UNION MEMBERS – 2016 (Jan. 26, 2017).

<sup>4</sup> MARK PERRY, AM. ENTERPRISE INST., CENSUS DATA RELEASED TODAY SHOW CONTINUED GAINS FOR MIDDLE-CLASS AMERICANS AND LITTLE EVIDENCE OF RISING INCOME INEQUALITY (Sept. 12, 2018).

<sup>5</sup> Mark Rank, *From Rags to Riches to Rags*, N.Y. TIMES, Apr. 18, 2014.

of 0 (perfect equality) to 1 (complete inequality) has remained between 0.46 and 0.48 since 1993.<sup>6</sup>

**Poverty is not an issue of unionization; it is an issue of employment.** The poverty rate for people who worked full-time, year-round in 2017 was just 2.2 percent, according to Census data. Seventy-seven percent of households in the highest-income fifth had at least one full-time worker, while 63.5 percent of households in the bottom fifth had no earners.<sup>7</sup>

**Workers' share of income has remained constant, and compensation growth continues to align with productivity growth.** Democrats claim that workers' share of total income has fallen, and that employees' compensation growth has not kept pace with their productivity growth as the union rate has declined in recent decades. However, when considering only *net* income rather than *gross* income and excluding self-employment income (as it cannot reasonably be attributed to labor nor capital), labor's share of income has remained remarkably consistent, rising just slightly from 68.5 percent in 1948 to 68.8 percent in 2014, according to a 2016 analysis from the Heritage Foundation.<sup>8</sup> Similarly, claims of slowing compensation growth measure only the compensation of private sector "production and non-supervisory employees" covered by the Bureau of Labor Statistics (BLS) payroll survey, but compare it to the productivity of all employees, including government workers, the self-employed, and others excluded from the BLS payroll survey. It also excludes most performance-based compensation such as commission, bonuses, and stock options. An "apples-to-apples" comparison for employees in the non-farm business sector shows that from 1973 to 2014, average compensation grew by 78 percent while average productivity grew by 81 percent—tracking much more closely than Democrats claim.<sup>9</sup>

#### **Union election data**

**More than 90 percent of workers represented by a union under the *National Labor Relations Act* (NLRA) today have never voted for that union to represent them.** According to a 2016 analysis from the Heritage Foundation, as of 2015, unions represented 8 million workers under the NLRA. Just 478,000 of those—6 percent—voted for union representation at some point in their careers and remain employed by the company at which they voted for the union.<sup>10</sup> The remaining 94 percent either voted against the union, or, more commonly, inherited a union that had been previously voted into the workplace and has never stood for re-election.

**The median number of days between a union representation petition being filed and a union election taking place fell from 38 days in fiscal year (FY) 2014 to 23 days in FY**

<sup>6</sup> MARK PERRY, *supra* note 4.

<sup>7</sup> U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2017 (Sept. 12, 2018).

<sup>8</sup> JAMES SHERK, HERITAGE FOUND., LABOR'S SHARE OF INCOME LITTLE CHANGED SINCE 1948 (May 31, 2016).

<sup>9</sup> JAMES SHERK, HERITAGE FOUND., WORKERS' COMPENSATION: GROWING ALONG WITH PRODUCTIVITY, HERITAGE FOUND. (May 31, 2016).

<sup>10</sup> JAMES SHERK, HERITAGE FOUND., UNELECTED REPRESENTATIVES: 94 PERCENT OF UNION MEMBERS NEVER VOTED FOR A UNION (Aug. 30, 2016).

2018.<sup>11</sup> The Obama NLRB's ambush election rule went into effect on April 14, 2015. Among other changes, the rule eliminated the minimum 25-day waiting period traditionally required before an election can be held, significantly shortening the opportunity for workers to inform themselves about the potential consequences of unionization. Some elections can take place in as few as 11 days.

**Union decertification petitions (RD)<sup>12</sup> result in elections at just two-thirds the rate of union representation petitions (RC).**<sup>13</sup> According to NLRB data of the last 10 fiscal years, an average of 68.5 percent of RC petitions resulted in an election, compared to just 47.5 percent of RD petitions. Unions won an average 66.9 percent of representation elections and lost 61 percent of decertification elections. Several barriers to decertification imposed by the NLRB apply only to decertification petitions but not to representation petitions, such as the "successor bar," the "settlement bar," and the "voluntary recognition bar." These "bars," in addition to "blocking" charges filed by unions, can delay or prevent decertification elections from ever taking place.

**Union membership continues to decline, despite the NLRA remaining essentially unchanged for over 70 years.** According to the BLS, the union membership rate was 10.5 percent in 2018, down from 20.1 percent in 1983, the first year for which comparable BLS data is available. Just 6.4 percent of private sector workers belonged to a union in 2018. In 2018, 16.4 million wage and salary workers were represented by a union. This figure includes 14.7 million union members and 1.6 million workers who report no union affiliation but whose jobs are covered by a union contract.<sup>14</sup>

<sup>11</sup> NLRB, MEDIAN DAYS FROM PETITION TO ELECTION, FY09 TO FY18, <https://www.nlr.gov/news-outreach/graphs-data/petitions-and-elections/median-days-petition-election>.

<sup>12</sup> NLRB, DECERTIFICATION PETITIONS – RD, FY09 TO FY18, <https://www.nlr.gov/news-outreach/graphs-data/petitions-and-elections/decertification-petitions-rd>.

<sup>13</sup> NLRB, REPRESENTATION PETITIONS – RC, FY09 TO FY18, <https://www.nlr.gov/news-outreach/graphs-data/petitions-and-elections/representation-petitions-rc>.

<sup>14</sup> BLS, UNION MEMBERS – 2018 (JAN. 18, 2019).

[Additional submissions by Chairwoman Wilson follow:]

**Protecting Workers' Right to Organize: The Need for Labor Law Reform**

Prepared Written Testimony of Bettie Douglas submitted to the Subcommittee on Health, Education, Labor, and Pensions, of the Education and Labor Committee, U.S House of Representatives. (Submitted April 9, 2019)

My name is Bettie Douglas, I'm 48 years old and I've worked at McDonald's in St. Louis, Mo, for thirteen years. I started out earning \$7.25 an hour, but I now earn \$10 an hour thanks to our organized efforts in the Fight for \$15 and a Union. The increase in pay has been a huge help as I work to raise my teenage son.

I joined the Fight for \$15 and a Union five years ago and immediately began noticing a difference in how I was being treated by my supervisors.

As soon as supervisors found out I joined the Fight for 15 and a Union, I began getting written up. A manager told me I had about 30 write-ups in my folder that I never knew about.

Another time I was asked to stay late at work, which I agreed to. The owner ended up calling the supervisor and yelling at them for asking me to work extra hours. I've worked at McDonald's for 13 years and can't understand why they would have a problem with me staying overtime.

I've been told by colleagues that supervisors have told new hires during their employee orientation to "watch out" for me because of my involvement with Fight for \$15 and a union.

The owner of the store has told me at times that we were wasting our time in our organizing efforts and that we'd never get \$15 an hour or a union.

Management's disapproval of my involvement with the Fight for 15 and a Union is evident in the way I've been singled out for acts that other employees have done and haven't been punished for.

The most recent incident happened this week when my general manager nearly got fired for giving me an employee discount on food. He's the only one who can give us discounts and often does to employees as he's allowed to. However, this time, he was yelled at, threatened to lose his job because he helped me. I believe this is solely because of managements disapproval of my involvement with the Fight for \$15 and a union.

Then there was last month, when I was suspended for giving a customer a cup for water. A manager came up yelling that the person who gave out a cup should lose their job. Instead of asking me to go to the office to talk to me in private about the situation, she chose to yell at me in front of customers.

Before I went home, the lead supervisor pulled me into his office to sign a write-up form, which I refused to do, and he told me I was suspended for five days. We've given cups to customers for water before and it's never been an issue.

Organizers with the Fight for 15 and a Union came to the store to speak with management on my behalf, but management refused to talk to them. We then went to the franchise owner's main office where he refused to talk to them, but did talk to me.

He asked me why I wasn't working full-time, and I told him that I'd been trying to do so for 13 years. He responded by telling me that I would now be allowed to work full-time. We discussed some of the issues I've faced during my time at the store. He said that I would have to complete my five-day suspension before I could return to work.

Let me tell you what a five-day suspension means for me. It means not making the money I need to pay my utilities on time. It means living with additional uncertainty about whether I'll have the money to afford groceries for myself and my son.

In the end, my supervisors called me into work one day before my suspension ended.

I know that I was only able to reach an agreement with my employer because I am active in the Fight for 15 and have the support of other community leaders. I most likely would have lost my job without these collective actions.

I now have more hours and even a lunch break because of our organizing efforts.

Everyone should have the opportunity to join a union, no matter where they work -- we should all have a voice and respect on the job.

Working people like me shouldn't have to worry about getting wrongfully fired for joining a union. Congress should authorize meaningful penalties for employers that try to do so and also safeguard our access to justice by ensuring that employers can't force us to waive our right to organize. And we should have the right to collectively bargain with all of the companies that control our job regardless of who's listed as our employer on paper.

I urge Congress to update our laws to make it easier for people to join unions.

If our lawmakers passed laws supporting our rights, thousands of workers like me could sleep better at night knowing that we no longer have to worry about wrongfully losing our jobs for joining a union.



### **Protecting Workers' Right to Organize: The Need for Labor Law Reform**

Prepared Written Testimony of Earvie Poole submitted to the Subcommittee on Health, Education, Labor, and Pensions, of the Education and Labor Committee, U.S House of Representatives (Submitted April 9, 2019)

My name is Earvie Poole. I was a Security Officer at George Bush Intercontinental Airport in Houston. I was threatened by my employer for speaking out and exercising my right to form a union.

I was working with Norred Security and my job was to check the people and trucks that drive in and out to make deliveries to the airport. It's a very critical job to check every single badge. I knew everyone's name. If people tried to sneak in, it was my job to stop them. I even knew when people's badges expired since I checked them every day and talked with them. They called me 'Sunshine' because I said 'good morning' to everyone. I really enjoyed it.

I'm the kind of person we need doing security at airports because I talked to everyone and didn't miss a thing. But it was when I exercised my right to form a union that made them mad.

I was paid \$11.75 an hour and it was not enough to cover my bills. We were also asked to work off the clock and I spoke out against that. They were stealing our wages by not paying us for the time we worked and we fought for back pay.

One of the biggest issues to me was that we had very limited restroom breaks. Imagine. For me, it was a health issue because I am diabetic. And at 62 years old, I just need to be able to use the restroom. We all do. But we had people going to the bathroom in trashcans and, unfortunately, some people also had accidents. People knew that if the blinds were down in our office not to come in. I started documenting how long it took our supervisors to give us permission to use the restroom and I talked to OSHA and told them the whole thing.

I fought it by trying to organize a union to win \$15 an hour and basic rights like restroom breaks. That's when the threats began. I talked to the media and I talked to elected officials and my employer came after me. Management threatened and intimidated me after I spoke to OSHA investigators. They also wrote me up for accepting donations after I lost everything in Hurricane Harvey. A man that works for an airline brought me a month's supply of insulin for my diabetes. Someone else brought his pastor in and we prayed together in my office. He brought donations for me.

I lost everything in the hurricane and I'm still staying with a friend. And Norred made it all worse.

In the end, OSHA fined the company. But I lost my job. A lot of people got fired or quit after that happened. We have to change this. People like me are getting punished for organizing a union and talking to our coworkers about our rights. And companies like Norred are getting away with it.

I'm going to keep my head up and keep going. But Congress can fix this. No one should have to go through what I've been through. I urge Congress to make it easier for working people to form a union and to have real penalties for companies like Norred.

[Questions submitted for the record and their responses follow:]

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April 4, 2019

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DUSTY JOHNSON, SOUTH DAKOTA

Ms. Cynthia Harper  
6850 Rushleigh Road  
Englewood, OH 45322

Dear Ms. Harper:

I would like to thank you for testifying at the March 26, 2019, Subcommittee on Health, Education, Labor, and Pensions hearing on "Protecting Workers' Right to Organize: The Need for Labor Law Reform."

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Friday, April 12, 2019, for inclusion in the official hearing record. Your responses should be sent to Kyle deCant of the Committee staff. He can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT  
Chairman

Enclosure

Health, Employment, Labor and Pensions Subcommittee Hearing  
*“Protecting Workers’ Right to Organize: The Need for Labor Law Reform”*  
Tuesday, March 26, 2019  
10:15 a.m.

**REPRESENTATIVE HALEY M. STEVENS (MI)**

1. Ms. Harper, please expand on the health and safety issues you faced on job.  
In what ways do you believe a union would have helped address these issues?
2. Ms. Harper, what did your company do once they found out workers were trying to form a union?



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Mr. Jake Rosenfeld, Ph.D.  
Associate Professor of Sociology  
Washington University in St. Louis  
One Brookings Drive, Box 1112  
St. Louis, MO 63130-4899

Dear Professor Rosenfeld:

I would like to thank you for testifying at the March 26, 2019, Subcommittee on Health, Education, Labor, and Pensions hearing on Protecting Workers' Right to Organize: The Need for Labor Law Reform."

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Friday, April 12, 2019, for inclusion in the official hearing record. Your responses should be sent to Kyle deCant of the Committee staff. He can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT  
Chairman

Enclosure

Health, Employment, Labor and Pensions Subcommittee Hearing  
*“Protecting Workers’ Right to Organize: The Need for Labor Law Reform”*  
Tuesday, March 26, 2019  
10:15 a.m.

**REPRESENTATIVE JOSEPH D. MORELLE (NY)**

1. **Dr. Rosenfeld:** Unlike other federal agencies, the National Labor Relations Board (NLRB) is not allowed to appoint individuals for the purpose of economic analysis when it develops its rules or precedents. What problems are posed by prohibiting a government agency from conducting economic analysis?



COMMITTEE ON EDUCATION  
AND LABOR  
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April 4, 2019

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Mr. Glenn M. Taubman  
Staff Attorney  
National Right to Work Legal Defense Foundation  
8001 Braddock Road, Suite 600  
Springfield, VA 22160

Dear Mr. Taubman:

I would like to thank you for testifying at the March 26, 2019, Subcommittee on Health, Education, Labor, and Pensions hearing on Protecting Workers' Right to Organize: The Need for Labor Law Reform."

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Health, Employment, Labor and Pensions Subcommittee Hearing  
“Protecting Workers’ Right to Organize: The Need for Labor Law Reform”  
Tuesday, March 26, 2019  
10:15 a.m.

**REPRESENTATIVE FRANCIS ROONEY (FL)**

1. Worker centers undermine the protections granted by the NLRA and LMRDA. By evading the financial reporting and disclosure requirements, they effectively create secret slush funds for unions by outsourcing organizing efforts to the worker centers. These funds open the door for corruption and misuse by worker center leaders.

Do you think the abusive and dishonest tactics used by worker centers should be included in any modernization of the LMRDA?

2. The Trump administration is pursuing regulatory changes to increase union financial transparency. Many of these changes were first proposed by the George W. Bush administration, and subsequently rescinded by the Obama administration. I reintroduced the *Union Transparency and Accountability Act* to codify these rules first submitted by President Bush.

Why do union employees deserve more transparency? Should the proposed regulatory changes be codified?

3. Many current employees are locked into old and outdated union contracts, approved long before they were hired. Current union employees need more power to be heard and to hold the higher-up decision makers within unions more accountable.

Why should outdated union agreements set the rules for the 21st century economy, should employees be allowed to petition for a union certification election when fewer than 50 percent of current “unit members” were members during the last election?



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Ms. Devki K. Virk, J.D.  
Member  
Bredhoff & Kaiser, PLLC  
805 Fifteenth Street, NW  
Washington, D.C. 20005

Dear Ms. Virk:

I would like to thank you for testifying at the March 26, 2019, Subcommittee on Health, Education, Labor, and Pensions hearing on Protecting Workers' Right to Organize: The Need for Labor Law Reform."

Please find enclosed additional questions submitted by Committee members following the hearing. Please provide a written response no later Friday, April 12, 2019, for inclusion in the official hearing record. Your responses should be sent to Kyle deCant of the Committee staff. He can be contacted at the main number 202-225-3725 should you have any questions.

We appreciate your time and continued contribution to the work of the Committee.

Sincerely,

ROBERT C. "BOBBY" SCOTT  
Chairman

Enclosure



Health, Employment, Labor and Pensions Subcommittee Hearing  
*“Protecting Workers’ Right to Organize: The Need for Labor Law Reform”*  
Tuesday, March 26, 2019  
10:15 a.m.

**REPRESENTATIVE JOSEPH D. MORELLE (NY)**

1. Ms. Virk: Unlike other labor and employment laws, the National Labor Relations Act does not specify any penalties for when an employer breaks the law.
  - a. So, when a worker gets fired for trying to organize a union, does anything deter the employer from doing it again?
  - b. Are there ways the employer can intimidate union organizers and break the law, and not have to do anything more than post a notice saying they violated the law?
  - c. And are the National Labor Relations Board’s remedies so weak that the toughest penalty they can order is for the employer to read the notice out loud?

**1. Ms. Harper, please expand on the health and safety issues you faced on job. In what ways do you believe a union would have helped address these issues?**

My job was demanding and potentially dangerous. I worked in the stretch room where I loaded the polyvinyl butyral (PVB) in a machine and input the measurements into computer. The room that I worked in got very hot and had no emergency exit. If the machine would have caught fire, there would have been no way to get out. To make matters worse, I had no sprinkler or fire extinguisher. I didn't have an intercom or phone to contact anyone either. On one occasion, we had a diesel spill and the plant was supposed to be evacuated. We were still in the room working. One of the employees asked management where we were since we were not evacuated with everyone else. Our supervisor came and got us, but only after an employee raised the concern.

The stretch room had a number of health and safety issues. We also didn't have a first aid kit or eye wash unit. Because of that, we started taking turns bringing in our own packs of band aids. The room didn't have exit signs with lights. In one instance, there was a power outage. It was so black in the room that we couldn't even see our hands in front of our faces. There were also numerous electrical problems with wires running across the floors. All of these issues were very scary for me.

When I cut the PVB, I worked with a homemade knife that consisted of a blade and some of the leftover PVB. We were not allowed to wear gloves, so someone got cut almost every day. Management told us they didn't use gloves and bare hands were needed to properly line up the glass. This area had no emergency exit, so if there was a fire there would be no way to get out. There were 3 lines in the cut room and one door to get in. In order to get to 2 of the lines, employees had us climb over the conveyor belt.

There was no lock out, tag out policy which are the steps taken to shut down equipment before maintenance occurs. Not only is it dangerous for workers not to have this policy, it is illegal. Glass was being stacked way too high and many of us felt it was dangerous for the forklift drivers to load the raw glass and then get off the lift to cut the bands. We frequently feared that someone would be crushed by the heavy glass.

There were no overhead mirrors in the aisles and no marked pedestrian lanes. Forklifts, golf carts and people were all using the same lanes causing mass confusion and we feared that someone would be killed accidentally. On numerous occasions, I witnessed people almost getting hit by forklifts because lanes were not properly designated for pedestrians and vehicles.

Workers were also handling hazardous materials with no safety equipment on. I remember being in the HR Department and three men came in and stated they were having breathing problems because they worked in an area with no masks.

Our safety concerns were not adequately being addressed by the Company. After I and some of my co-workers filed complaints with OSHA and Fuyao was fined, some of the above issues were fixed. The Union helped us with those complaints, and I believed that if we had a union

certified to represent us, the plant would be safer and fairer across the board. At the end of the day, we all wanted to make Fuyao a better and safer workplace for everyone.

In my previous job, we had a union. A union gave us a voice on the job and a say in health and safety improvements. From my experience, a union at Fuyao would have allowed us to form health and safety committees. We would have had a library of knowledge that the UAW brought to the table. Some of the committees that helped us would have been helpful at Fuyao such as Safety, Health and First aid, Ergonomics, and Hazmat committee. We would have also had a Representative on each shift to call if we had any concerns.

**2. Ms. Harper, what did your company do once they found out workers were trying to form a union?**

When the company found out we were trying to organize a union, everything changed. Some of the workers were fired and faced retribution. Several workers who served on the Volunteer Organizing Committee (VOC) were prime targets of the company and were fired. Management saw that we had strong union support and they came up with a plan to break us up. They got rid of 3<sup>rd</sup> shift and split us up by moving workers around to other departments. Management threatened us at meetings saying that if we had a union they would pack up and move their business elsewhere.

Fuyao also paid an outside company to come in and hold small group mandatory meetings. They told us negative things about the United Auto Workers Union. I recall a presenter held up a booklet, allegedly from the NLRB about our rights. But it didn't have NLRB seal on it. He said that everyone had the right to join a union but focused on how bad the union was for workers. We were told that all the union wants to do is take our money and that the union didn't respect us, it just respected the money. They told us if we signed the UAW union card, we would be signing our life away. I found out later that Fuyao paid an outside firm, Labor Relations Institute Inc./LRI Consulting Services Inc. close to \$800,000 to fight back the union. Meanwhile, our starting pay was only \$12 an hour and workers were still waiting for their annual raise.

Workers on VOC committee were being watched closely. Management had workers sign false statements which gave them justification for firing union supporters. The company started changing policies to intimidate workers. When I worked there, almost every week there would be a new policy change announced in the morning meeting. They enforced the new rules on union supporters.

I was a strong supporter of the union and management knew it. Management saw me handing out handbills at the front entrance of plant which were flyers inviting workers to union meetings. I wore pro-UAW t-shirts. I was featured in the media. All perfectly within my right to do under the NLRA. I was also publicly identified as the employee who filed a complaint with OSHA against Fuyao. OSHA cited Fuyao for numerous OSHA violations and they were fined. The company retaliated and took steps to push me out. In April 2017, I was demoted into a lower paying and more physically demanding job after refusing to sign a paper attesting that I had been trained on the job. They moved me to the bubble repair job, which was previously a two-man job but I was forced to do it alone or risk losing my job all together. I questioned HR about their decision to reassign me. Their rationale was that there were too many workers in the lamination

stretch room and I wasn't getting along with my co-workers. I knew this wasn't true, especially since the interpreter was doing my lamination job after I was moved. This was my first time hearing these new claims as they had previously stated it was because I refused to sign the bogus training paperwork.

My new job was to inspect glass for bubbles. I had to pick up glass that weighed up to 100 lbs. Often, the glass was taller and wider than me. It was physically tough. In June 2017, I was injured on the job and went out on leave. I felt a sharp pain in my back while putting glass down on a rack. I was fired while on medical leave for allegedly exceeding available leave time. I was fired just days after the UAW filed a petition to represent a unit of Fuyao employees. It didn't seem fair since I had a good record with the company. My performance and attendance was good. I organized department bowling parties. It didn't seem right.

Unfortunately, the anti-union campaign worked. Workers feared losing their job for supporting the union, and we ended up not getting enough support to form a union. These problems persist at Fuyao. In March 2018, a co-worker of mine was crushed to death between a forklift and nearly a ton of glass. Employees still contact me from the plant saying that they wish they had a union. We need labor reforms that put workers before profits.

## Health, Employment, Labor and Pensions Subcommittee Hearing

REPRESENTATIVE JOSEPH D. MORELLE (NY) 1. Dr. Rosenfeld: Unlike other federal agencies, the National Labor Relations Board (NLRB) is not allowed to appoint individuals for the purpose of economic analysis when it develops its rules or precedents. What problems are posed by prohibiting a government agency from conducting economic analysis?

Rosenfeld:

In 1940 the National Labor Relations Board (NLRB) abolished its Division of Economic Research. That move to outsource expertise was made permanent with passage of the Taft-Hartley act in 1947, which prohibited the board from engaging in in-house economic analysis.

The results of this ruling have been predictable. Without an internal body to conduct economic and social scientific research on relevant issues, the board must rely on outside organizations to supply needed analyses. The organizations are rarely unbiased, and often underwritten by special interests intending a preordained outcome from the board. The lack of in-house research expertise places the NLRB behind other relevant government agencies, “a shocking anachronism”<sup>1</sup> in an era where agency expertise, including careful and thorough cost-benefit considerations, are the norm.

Work cited:

Hafiz, Hiba. 2017. “Economic Analysis of Labor Regulation.” *Wisconsin Law Review*. 1115-1188

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<sup>1</sup> Hafiz 2018: 1115.



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April 12, 2019

Hon. Representative Francis Rooney  
c/o Committee on Education and Labor  
Subcommittee on Health, Education, Labor and Pensions  
United States House of Representatives  
2176 Rayburn House Office Building  
Washington, DC 20515-6100

Re: March 26<sup>th</sup> 2019 Hearing on "Protecting Workers' Right to Organize: The Need for Labor Law Reform"

Dear Congressman Rooney:

It was my privilege to testify before the Committee on Education and Labor's Subcommittee on Health, Education, Labor and Pensions on March 26, 2019. Please consider this letter as my responses to your supplemental questions, which were forwarded to me by Chairman Scott on April 4, 2019.

Question 1: Worker centers undermine the protections granted by the NLRA and LMRDA. By evading the financial reporting and disclosure requirements, they effectively create secret slush funds for unions by outsourcing organizing efforts to the worker centers. These funds open the door for corruption and misuse by worker center leaders.

Do you think the abusive and dishonest tactics used by worker centers should be included in any modernization of the LMRDA?

Answer: There is no question that so-called "worker centers" are being funded and used by labor union officials to forcibly organize new workers, often as stalking horses for large, established unions. However, because these so-called worker centers typically do not engage in actual contract negotiations or represent employees vis-a-vis their employer, they are able to skirt the LMRDA's statutes and the NLRA's financial disclosure case rulings, under which actual labor organizations are required to operate. A comprehensive report about worker centers, which are often subterfuges for direct union involvement in organizing new workers, is found at The Emerging Role of Worker Centers in Union Organizing,

[https://www.uschamber.com/sites/default/files/uscc\\_wfi\\_workercenter-report\\_2017.pdf](https://www.uschamber.com/sites/default/files/uscc_wfi_workercenter-report_2017.pdf)

**Defending America's working men and women against the injustices of forced unionism since 1968.**

According to that report, so-called worker centers are rapidly evolving to resemble actual labor unions. “Some may already have evolved to the point where they would seem to qualify as labor organizations under the National Labor Relations Act (NLRA) or the Labor-Management Reporting and Disclosure Act (LMRDA) – and yet they will likely never become unions as we have customarily thought of them. Worker centers often go where unions cannot, whether demographically, culturally or politically, or perhaps even with regard to engaging in things like secondary activity or unlimited picketing, where they are exempt from certain legal and regulatory constraints that apply to unions.”

The bottom line is that the LMRDA’s transparency and disclosure reporting requirements must be modernized and strengthened to take into account well-funded and sophisticated operations like so-called worker centers, which are little more than stalking horses for large, established unions. At a time when union officials cannot legally force any employee to fund their organizing campaigns, *see, e.g., Janus v. Am. Fed’n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448 (2018); *Ellis v. Railway Clerks*, 466 U.S. 435 (1984); *Beck v. CWA*, 776 F.2d 1187, 1211-12 (1985), *aff’d en banc*, 800 F.2d 1280 (4th Cir. 1986), *aff’d, CWA v. Beck*, 487 U.S. 735 (1988), it is unfair to allow them to siphon off workers’ dues money to allegedly “independent” worker centers – whose main function is to organize new workers – but without any of the disclosure requirements.

Question 2) The Trump administration is pursuing regulatory changes to increase union financial transparency. Many of these changes were first proposed by the George W. Bush administration, and subsequently rescinded by the Obama administration. I reintroduced the Union Transparency and Accountability Act to codify these rules first submitted by President Bush.

Why do union employees deserve more transparency? Should the proposed regulatory changes be codified?

Answer: Union officials’ financial mismanagement and corruption is rampant, in part because “absolute power corrupts absolutely.” In states that have not adopted Right to Work laws, union officials are granted the power to have employees fired if they do not pay dues or fees as a condition of their employment. This absolute power in the workplace leads directly to financial abuses and improprieties, which can be seen in many recent corruption scandals involving high union officials. *See, e.g.:*

*Feds suggest UAW/Fiat Chrysler scandal was wider conspiracy,*  
<https://www.freep.com/story/money/cars/chrysler/2018/06/13/uaw-fiat-chryslerscandal-conspiracy/697774002/>;

*Former UAW vice president charged in U.S. corruption probe,*  
<https://www.reuters.com/article/us-fiat-chrysler-corruptionuaw/former-uaw-vice-president-charged-in-u-s-corruption-probeidUSKCN1QZ1RD>;

*Philly union boss and councilman indicted in corruption probe,*  
<https://www.nbcnews.com/politics/justice-department/philly-union-bosscouncilman-indicted-corruption-probe-n964731>;

*Why Johnny Doc's indictment is a problem for all Philly unions,*  
<https://www.philly.com/news/johnny-docdougherty-indictment-philadelphia-unions-ibew-20190204.html>; and

*U.S. v. Caleb Gray-Burriss*, 791 F.3d 50 (D.C. Cir. 2015), *further proceedings*, \_\_\_ F.3d \_\_\_, 2019 WL 1523049 (D.C. Cir. April 9, 2019) (union official's fraud and embezzlement convictions upheld by the D.C. Circuit). The Department of Labor's website details almost daily examples of union officials' mismanagement, theft of workers' dues and other corruption.  
[https://www.dol.gov/olms/regs/compliance/enforce\\_2019.htm](https://www.dol.gov/olms/regs/compliance/enforce_2019.htm).

Even in Right to Work states where union membership and dues payments are strictly voluntary, union members are entitled to know how their dues money is being used. For the reason the LMRDA was enacted in the first place – widespread union corruption – the reporting requirements should be strengthened and vigorously enforced. Moreover, codifying these reporting requirements into law would go a long way towards preserving fiscal transparency and responsibility for all employees and union members.

Question 3) Many current employees are locked into old and outdated union contracts, approved long before they were hired. Current union employees need more power to be heard and to hold the higher-up decision makers within unions more accountable.

Why should outdated union agreements set the rules for the 21st century economy, should employees be allowed to petition for a union certification election when fewer than 50 percent of current “unit members” were members during the last election?

Answer: One of the most startling statistics in all of labor relations is that 94% of workers unionized under the NLRA have never voted for the union representing their workplace. James Sherk, *Union Members Never Voted for a Union*, Heritage Foundation, August 30, 2016, available at <https://www.heritage.org/jobs-and-labor/report/unelectedrepresentatives-94-percent-union-members-never-voted-union>.



Labor union officials under the NLRA do not have to stand for periodic re-certification, and it is a practical impossibility for even the most independent minded and motivated employees to mount and run a decertification campaign in the face of entrenched union officials with their "often considerable economic, political, and informational resources," *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 523 (1991), dedicated to defeating the decertification effort and clinging to power.

In many workplaces, particularly those with large and geographically spread workforces, union monopoly contracts were voted in decades or even generations ago, and the pattern contracts and entrenched seniority systems of yesteryear remain in place. But encrusting a labor union onto a workplace, with no showing of *current* employee support, does not lead to workplace stability and does not protect individual employees' rights of free speech and association.

One easy solution is for the Congress to restore voluntarism into the federally-imposed labor policy. That could be done with the passage of the National Right to Work Act (S.B. 525), which, as introduced in past Congressional sessions, does not add a single word to federal law. That legislation simply repeals sections of bad law passed in the 1930s that imposes forced unionism on the states and their private sector workers. Restoring workers' right to provide or withhold their money from union officials would go far in holding union officials accountable to the workers they claim to represent.

Other legislative proposals that would require periodic union re-certifications are desperately needed as well. Similarly, laws that suspend union officials' representation privileges when voluntary membership drops below 50% of the eligible unit employees would make union officials earn the support of the workers they purport to represent, and protect workers from having a non-responsive union hierarchy permanently installed in their workplace.

I hope these answers are responsive to your inquiry, and I remain at your disposal if you need any additional assistance or information.

Sincerely,

/s/ Glenn M. Taubman

Glenn M. Taubman  
Attorney at Law

[Whereupon, at 12:06 p.m., the subcommittee was adjourned.]

